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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1947**

## No. 122

EDDIE (BUSTER) PATTON, PETITIONER,

*vs.*

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**PETITION FOR CERTIORARI FILED JUNE 12, 1947.**

**CERTIORARI GRANTED JUNE 23, 1947.**

# SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUG. 11, 1947.

[fol. 1]

# IN CIRCUIT COURT OF LAUDERDALE COUNTY, STATE OF MISSISSIPPI

INDICTMENT

In the Circuit Court of Lauderdale County, at the February Term, in the Year of Our Lord, Nineteen Hundred and Forty-six

The Grand Jury for the State of Mississippi, taken from the body of good and lawful men of Lauderdale County, in the State of Mississippi, elected, impaneled, sworn and charged to inquire in and for said County, in the State aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present:

That Eddie Patton in said County, on the —— day of February, A. D. 1946 did unlawfully, wilfully, feloniously and of his malice aforethought, kill and murder one, Jim Meadows, a human being contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the Stat of Mississippi.

Jack R. Lobrano, District Attorney.

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[fol. 2] IN CIRCUIT COURT OF LAUDERDALE COUNTY

No. 4539

STATE OF MISSISSIPPI,

vs.

EDDIE PATTON

MOTION TO QUASH INDICTMENT—Filed February 22, 1946

Comes now the defendant, Eddie Patton, by his attorneys of record, J. T. McDonald, and L. J. Broadway, and moves the court to quash the indictment herein returned against him, and for grounds of motion assigns the following:

(1) The defendant is a negro and has been indicted by the Grand Jury during the present term of this court for the murder of a white man, and that a large percentage of

the qualified electorate of the county from which jurors are selected is of the negro race, and no member of this race was listed on the general venire summoned for the first week of this court from which the Grand Jury was drawn and empanneled, nor on the venires for either of the other weeks of this court.

(2) That the general venire or venires issued for this term of court, from which the Grand and Petit juries were selected, did not contain the name or names of a single member of said race qualified for jury service.

(3) That for a great number of years and especially since 1935, and during the present term of court and in making up the jury box from which jurors have been selected, empanneled, and sworn, there has been in this county a systematic, intentional, deliberate and invariable practice on the part of administrative officers to exclude negroes from the jury lists, jury boxes and jury service, and that such practice has resulted and does now result in the denial of the equal protection of the laws to this defendant as guaranteed by the 14th amendment to the U. S. [fol. 3] Constitution.

J. T. McDonald, L. J. Broadway, Attorneys for Defendant.

*Duly sworn to by J. T. McDonald, et al. Jurats omitted in printing.*

[fol. 4] [File endorsement omitted]

[fol. 5] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

ORDER OVERRULING MOTION TO QUASH INDICTMENT—Filed February 23, 1946

Upon considering the motion to quash the indictment and the evidence offered thereon, the court is of the opinion that same should be and it is overruled, to which action of the court the defendant excepted.

So ordered and adjudged this the 23rd day of Feb., 1946.

Jesse H. Graham, Circuit Judge.

[File endorsement omitted.]

[fol. 6] IN CIRCUIT COURT OF LAUDERDALE COUNTY

**Statement of Proceedings on Motion to Quash Indictment**

B. M. STEVENS called as a witness by the defendant on the motion, was sworn, and testified as follows:

Direct examination.

By Mr. McDonald:

Q. Mr. Stephens, for the record of the court, your name.
A. Brice M. Stephens.
Q. Your occupation?
A. With the City Identification Bureau.
Q. Residence?
A. City of Meridian, Poplar Springs Drive.
Q. Have you, or have you not, ever held a county office in this county?
A. I have.
Q. What offices, please?
A. Supervisor and Sheriff.
Q. Supervisor for how long?
A. Eight years.
Q. What were those years please?
A. Well I will have to think back a little. I went in the sheriff's office in 1932, and it was eight years prior to 1932. Must have been about 1924 up through 1931.
Q. Well then, that would make how long a time that you served as an officer of Lauderdale County?
[fol. 7] A. Twelve years total.
Q. Did, or did you not serve as sheriff immediately following your terms as supervisor?
A. I did.
Q. As supervisor was, or was it not your duty to help fill the jury box?
A. It was.
Q. Have you any knowledge as to whether or not there were registered, qualified negro electros in Lauderdale County during those eight years?
A. Of my own knowledge, Mr. McDonald, I would not know so far as seeing the record, but there was common knowledge that there were some in Beat One.
Q. During that eight years as supervisor did you, or did you not ever see the name of a negro go in the jury box?

A. Not that I know of.

Q. During your term as sheriff did you ever know of your own knowledge of the name of a negro coming out of the jury box?

A. No.

Q. This calls for a conclusion. I am going to ask it. Do you happen to know of the policy of the Board of Supervisors relative to race and color in putting names in the jury box?

A. Mr. McDonald, I could not answer that question definitely?

Q. What was your policy?

A. Well, I had no qualified negro electors in my district.

Q. Of what beat were you supervisor, or district rather?

A. District Three.

Q. Is, or is not that a rural district?

[fol. 8] A. It is.

Q. You just stated, Mr. Stephens, that as a matter of common knowledge there were negro qualified electros in Lauderdale County during that time?

A. Yes, sir.

By Mr. Lobrano: Now I object to that. He said there were some in Beat One.

By Mr. Broadway: That is what he stated.

A. Beat One.

By Mr. Lobrano: That he heard there were some in Beat One.

By the Court: He heard there were some in Beat One.

By Mr. Broadway: No, sir, I beg the court's pardon. He said as a matter of common knowledge there were some in Beat One.

By Mr. McDonald:

Q. I will ask this question. Was it, or was it not a matter of common knowledge on the same basis as it was a constant policy of the Board of Supervisors of Lauderdale County not to place a negro juror in the box regardless of qualifications?

By Mr. Lobrano: We object to that. He has stated he could not know the policy of the Board.

By the Court: Yes, sir.

[fol. 9] By Mr. McDonald:

Q. This was, or was not during the time you were a member of the Board and actively in the discharge of your duties as supervisor?

A. Mr. McDonald, we never discussed it as I recall, but I have already stated that I never knew one to be on the jury, coming out of the jury box, or going in it.

Q. For how long a period have you been around the courts of Lauderdale County?

A. You mean when I begin to visit the court roo..

Q. With some constancy or regularity?

A. Well I would say twenty years.

Q. During that twenty years have you ever seen a juror report for jury service in Lauderdale County either for the grand jury, petit jury, or special venire, and especially in criminal court——

A. (Interposing:) No, sir, my recollection is now I have not.

By Mr. McDonald: That is all.

Cross-examination.

By Mr. Lobrano:

Q. Then of your own personal knowledge, Mr. Stephens, you could not say whether there was, or was not qualified negro electors when you were a member of the Board of Supervisors, in Beats One, Two, Three, Four or Five?

A. No, sir.

Q. What you said, there may or may not have been some in Beat One? Just something you heard?

A. Common knowledge.

[fol. 10] Q. The common knowledge you got was hearsay knowledge, wasn't it?

A. Here is what I am basing my remarks on. After I was elected sheriff there was one or two negroes claimed they voted for me.

Q. You found out a lot of people claimed they had done that because they wanted a favor from you?

A. That's right.

Q. So far as your own personal knowledge, you don't know whether a negro in Beat One qualified when you were a member of the Board of Supervisors or not?

A. I have my first answer, of my own knowledge I don't know.

By Mr. Lobrano: That's all.

Redirect examination.

By Mr. McDonald:

Q. Mr. Stephens, do you, or do you not know approximately the population of Lauderdale County?

A. No, sir. It would be wholly a guess, just wholly a guess.

Q. Do you, or do you not know approximately the number of qualified electors in the county?

A. I know about the average vote polled in the county during election years, approximately that amount.

Q. Give us that please.

A. From nine to eleven thousand.

Q. Has that been the approximate voting in recent elections?

A. Yes, sir. It has.

(Witness excused.)

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[fol. 11] Mrs. Addie Rivers, called as a witness on behalf of the defendant, on the motion, was sworn, and testified as follows:

Direct examination.

By Mr. Broadway:

Q. You are Mrs. Addie Rivers?

A. I am.

Q. Mrs. Rivers, what official position do you hold in this county?

A. Deputy Circuit Clerk.

Q. And how long have you been such?

A. Since September 1942.

Q. And you have worked under two different clerks?

A. I have.

Q. Mr. Bledsoe, prior to his death, and Mr. Ferrill since then?

A. Yes, sir.

Q. Has that work as deputy clerk been continuous?

A. Yes, sir.

Q. Mrs. Rivers, the clerk is one course custodian of the registration and poll books?

A. He is.

Q. In the capacity of the discharge of your duties down there to the clerk as deputy, do you or not have access to and occasion to go to and register people on the registration books yourself?

A. Practically every day.

Q. Then you have more or less access and occasion to have access to those books every office day of the week?

A. Yes, sir.

[fol. 12] Q. Mrs. Rivers, you don't know offhand of the number of, or do you, of the number of qualified electors of the negro race that those books reflect?

A. I do not, no, sir. Have no way of knowing other than checking them.

Q. And that of course would involve an actual count?

A. That's right.

Q. Mrs. Rivers, I want you to give the Court your best judgment as to the number of qualified electors of the negro or colored race?

A. Well, Mr. Broadway——

Q. (Interposing:) Just a minute—now reflected by those books?

A. Well, offhand I wouldn't be in position to say because I have not had occasion to check them.

Q. You understand I am not asking you for the actual count or the actual figure. I am simply asking you in your best judgment, since you have stated the occasion of your going to the books, and your access to the books, your familiarity with them, to give the Court the benefit of your best judgment as to the number of qualified electors of the negro or colored race presently reflected by those books?

By Mr. Lobrano: Now if the court please if she does not know, she could not, if she has not gone and checked them. It would not be anything but guess.

By Mr. Broadway: She has not said she did not have judgment. She said she has not counted them.

[fol. 13] By Mr. Lobrano: I thought she said she did not have any judgment.

By the Court: Overruled.

By Mr. Broadway:

Q. You may answer the question.

A. Mr. Broadway, just offhand, and from the experience I have had in checking the record with Mr. Ferrill to get qualified colored electors for the other court in the post office, in checking through our records we only found eight qualified colored electors at that time.

Q. And did that check involve a check of the entire county?

A. We did not check the entire county because he was only asked for eight qualified electors, and we checked a number of the poll precincts in order to get that eight.

Q. Do you remember how many you checked?

A. Some ten, or twelve, or fifteen.

Q. And there are how many precincts in the county?

A. I think forty-six or seven.

Q. Were those precincts inside the city or outside the city?

A. Inside the city.

Q. And since you were only required to get eight at that time for the Federal Court——

A. (Interposing): That's right.

Q. You did not go any further than to get the eight?

A. That's right.

Q. And that, you say, involved the check of how many precincts?

A. I just don't know offhand, Mr. Broadway, but there [fol. 14] were several of them.

Q. Well, I am sure you don't know the exact number, or you so state it, but can you approximate the number or give us your best judgment as to the number you checked to get those eight?

A. Oh, we checked some ten or fifteen.

Q. You say from ten to fifteen precincts?

A. Yes, sir.

Q. Now then you do know then, both from your experience and otherwise, that qualified negro jurors are being all along selected for service in the Federal Court?

A. Yes, sir.

Q. Mrs. Rivers, now if you have no objection, please, ma'm—and I don't want to appear unduly pressing here about these questions—would you give us now, in the light of your experience and your knowledge of your access to and the frequency with which you have that access to the registration and poll books in the office where you work,

would you now give us the benefit of your best judgment, if such judgment you have, as to the number of qualified negro electors reflected by those books?

A. Well, Mr. Broadway, our books do not reflect the qualified electors. To be a qualified elector, you would have to check our book with the Sheriff's office, and in my best judgment I could not give you that, because I don't know.

Q. I beg your pardon, I framed the question wrong. If you will, please, ma'm, give the Court your best judgment as to the number of negroes, the colored or negro race, as reflected by the registration and poll books as of the present time in the clerk's office—just your best judgment?

[fol. 15] A. There is a hard question to answer too, Mr. Broadway, because I have not registered the colored voters. Mr. Ferrell has that authority. We never have registered one since I been in the office without checking the color. I could not give you that.

Q. You mean you yourself have not registered them?

A. No, sir.

Q. Whether the clerk has himself or not, you do not know?

A. I do not know.

Q. Mrs. Rivers, other than this one occasion you have mentioned about being called on to get the names of negroes from your books for service in the Federal Court, have you at any other time been called upon to list names of qualified negro electors?

A. I have not.

Q. Only that one time?

A. Yes, sir.

Q. Do you have any way of knowing whether any of those eight that you did list were later subpoenaed for service in the Federal Court?

A. No, I do not.

Q. Mrs. Rivers, prior to your becoming a deputy circuit clerk, did you on many occasions have any occasion to be in the court room or about the court room?

A. Yes, I worked in the office from '40 to '42 as a clerical worker.

Q. You did work in there, but you were not a deputy?

A. Yes, sir.

Q. Then you did have, or did you have occasion to be around the court room and in the court room during terms [fol. 16] of Federal Court—I mean during terms of criminal circuit court during that time from 1940 to 1942?

A. I did.

Q. During that time did a member of the negro race serve on the jury, Grand or petty?

A. They did not.

Q. Since you have been a deputy circuit clerk, officially such, to your knowledge at any criminal term of the circuit court has there been a member of the negro or colored race serve on the jury or be called or drawn on the jury?

A. No, sir.

Q. Prior to 1940 you did not have any experience or occasion to attend the courts?

A. No.

By Mr. Broadway: That's all.

Cross-examination.

By Mr. Lobrano:

Q. You said in the past there mau have been one or two negroes you know of or heard of serving on the Federal jury. Federal Court draws their jurors from a large number of counties in the district?

A. Certainly do.

Q. It is not confined to Lauderdale County, but other counties in the Southern District, when it sits here in Lauderdale County? You said when you made the search it was difficult to find eight registered electors. You mean difficult to find eight paid their poll tax?

A. That's right.

[fol. 17] Q. And you looked in a large number of precincts too when trying to find them?

A. That's right.

Q. And it was with considerable difficulty you were able to find eight?

A. That's right.

Q. When was it you made that search for those eight negroes?

A. Last year sometime. I couldn't tell you the date Mr. Ferrill had the request.

Q. At the time this present Grand Jury was put in the box, you don't know whether there was a qualified negro voter in the county or not?

A. I certainly do not.

Re-direct examination.

By Mr. Broadway

Q. Mrs. Rivers, was there any member of the colored or negro race served on the Grand Jury this term of court?

A. No, sir.

Q. Was there any member of the colored race called, or drawn, or summoned for jury service during the first week of this term of circuit court?

A. No, sir.

Q. You stated in response to the District Attorney's question, a great number of books had to be searched to find the eight. You stated on the first cross-examination there was some ten to fifteen precincts searched in order to find eight?

A. That's right.

Q. And how many precincts are there in the City of [fol. 18] Meridian alone?

A. Eleven.

Q. And therefore you could not have searched as many as fifteen in the City of Meridian alone?

A. Not in the city alone. You did not ask that question.

Q. Then there are eleven precincts in the city?

A. Yes, sir.

Q. And how many offhand in Beat One?

A. Just offhand I couldn't tell you. I don't know.

Q. Can you tell me whether in getting those eight, you searched the books of all eleven precincts inside the city?

A. I could not tell you that offhand.

Q. Then you don't whether you checked part of them from the City proper and others from outside the city inside Beat one?

A. No, sir.

By Mr. Broadway: That's all.

(Witness excused.)

[fol. 19] By Mr. Broadway: I would like to ask Mrs. Rivers one further question.

MRS. ADDIE RIVERS recalled for further

Direct examination.

By Mr. Broadway:

Q. Mrs. Rivers, you stated in response to the District Attorney's question that it was sometime last year when you selected, or helped in selecting these eight qualified negroes for jury service in the Federal Court. Can you tell the court whether it was after the April meeting of the Board of Supervisors in 1945 or not?

A. I don't recall, Mr. Broadway.

Q. The jury box was just recently emptied of names by the Board of Supervisors and refilled? You know that, don't you?

A. Yes, sir.

Q. It was from the jury box before that, as it was constituted before that, was it not, that the jurors, including grand and petit, for the present term of court were drawn?

A. Right.

By Mr. Broadway: That's all.

(Witness excused.)

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[fol. 20] CICERO FERRILL called as a witness on behalf of the defendant, was sworn, and testified on the motio as follows:

Direct examination.

By Mr. Broadway:

Q. You are Mr. Cicero Ferrill?

A. C. C. Ferrill, Sr., yes, sir.

Q. Mr. Ferrill, what official position, if any, do you hold in this county?

A. Circuit Clerk.

Q. And how long have you been such?

A. I took the oath of office January 20, 1943.

Q. That was to fill the unexpired term of Mr. Bledsoe?

A. Well I was appointed temporarily pending an election. The governor appointed me.

Q. When were you appointed, Mr. Ferrill?

A. Well I think it was about three days prior to the 20th, to the 17th day of May. I did not take the oath of office the day of the appointment.

Q. Just a few days prior to that?

A. Yes, sir.

Q. Prior to that what official position did you hold in the county?

A. I was Deputy Chancery Clerk.

Q. Mr. Ferrill, since you have been Circuit Clerk have there been the names of any colored or negro race placed in the jury box or drawn therefrom, or selected, or summoned for jury service?

A. Well I can't answer that question with any degree of accuracy, because it is the supervisors draw the names [fol. 21] from the poll books.

Q. All right I will re-ask the question. Since you have been Circuit Clerk has there been drawn from the jury box and summoned for jury service at any term of court, especially criminal terms, any member of the negro or colored race?

A. I can't recall any particular instance. I don't recall that. No, sir. I wouldn't know whether they were negroes by the names, you know, in the jury box.

Q. I know by the name alone, but you are in and out of court when court is being held.

A. Oh, yes.

Q. Have you seen any negro serve in that time?

A. No, sir.

Q. Have you seen any negro called during that time, even though excused by the attorneys or judge?

A. No, sir.

Q. Now, Mr. Ferrill, prior to that you were deputy Chancery Clerk?

A. Yes, sir.

Q. As you know, the Board of Supervisors lists the names of persons who are to serve on the juries in the county for one year at a time, or approximately a year—well it is supposed to be a year—in the discharge of which duties as Deputy Chancery Clerk, did you have any occasion to observe the making up of those listed, making copies of those lists for delivery to the Circuit Clerk?

A. No, sir; the only thing, the Supervisors draw them in the rough, then bring the list to the Chancery Clerk's office,

you know. A young lady makes two copies, original and [fol. 22] duplicate. They are both brought to our office to be filed.

Q. That is the Circuit Clerk's office?

A. Yes, sir; and one copy is double spaced so we can clip the names and put in the jury box.

Q. I am dealing with the time you were in the Chancery Clerk's office. Were copies of those lists made under your supervision?

A. No, sir.

Q. Did you have anything to do with it?

A. No, sir.

Q. Did you see and observe them being made?

A. Just see the typist or clerk making them was all.

Q. Can you tell the court during that time whether there were names of any negroes put on that list for jury service?

A. I don't re-call there was because I didn't observe any names on there at all.

Q. Mr. Ferrill, do you or not know as a matter of common knowledge that for the past fifteen or twenty years at least that there has been no negro served on the jury, grand or petit, at criminal terms of court in this county.

A. Well, the only time I can give you is the time I have been connected with the courts as Deputy Chancery Clerk or Circuit Clerk.

Q. All right, when did you go to work in the Chancery Clerk's office? I meant to get that?

A. Well, I was appointed Circuit Clerk January 20, 1943, and I had been prior to that time about nine years in the Chancery Clerk's office.

[fol. 23] Q. And under how many different clerks?

A. Well, the first was Mr. Mack Cameron, and then Mr. Howard Cameron.

Q. Now during that nine years you were in the Chancery Clerk's office, do you or not know, as a matter of common knowledge, or otherwise from your discharge of your duties in there, or in any other way or capacity, that no negro had ever been drawn for service?

A. No, sir; I can't answer that question because I don't know.

Q. Just a minute—or actually served or actually put in the box for service?

A. I don't recall any negro having served. I don't know who was put in the box.

Q. During that time you know no negro ever served on the jury?

A. I never saw one.

Q. And wouldn't it, Mr. Ferrill, as a matter of fact been a rather unusual thing if one had?

A. Well, I don't know, sir, I can't answer that question. I don't know.

Q. At any rate, you know that during that time, the nine years you were in the Chancery Clerk's office and since you have been in the Circuit Clerk's office, that no negro has actually served at least on the jury at criminal term of court?

A. I have never observed one on the jury.

Q. And you tell the court that, both from your experience as Deputy Chancery Clerk and as Circuit Clerk, and the [fol. 24] knowledge you have acquired while in those two capacities?

A. Yes.

Q. Mr. Ferrill, do you recall what time it was last year you were called upon to secure the names of eight qualified negroes for jury service in the Federal Court?

A. I don't recall the particular month, Mr. Broadway, but the Federal Jury Commissioner, of Jackson, requested that I furnish him about a hundred names and he said, "You know it is customary to have negroes on the federal jury, and I would like to have eight or ten qualified negro electors on that list"; and I selected about eight, and it took me a couple of days to find out whether or not they were qualified, and I managed to get eight.

Q. But eight was all they requested, the maximum?

A. Eight or ten.

Q. Now, Mr. Ferrill, can you tell us the books or how many precincts, and whether they were in or outside the city, that you had to search in order to get those eight?

A. I check principally in the City of Meridian.

Q. There are eleven precincts.

A. (Interposing:) Yes, sir.

Q. And, therefore, eleven books to search so far as the City itself is concerned?

A. Yes, sir.

Q. And, therefore, do you recall how many books you searched to get those eight?

A. Now, sir; I don't. I tell you the way I figure it in my own mind. I figured the eight or ten representative negroes

in the city I thought were fairly decent and searched for their names.

[fol. 25] Q. Then you selected negroes in advance to finding their names?

A. I made up a memorandum to try to find these.

Q. Then you had in mind, at the time you started checking, the names of certain particular negroes?

A. Just as a routine in order to try to check it.

Q. And you looked for those names only?

A. I looked for all of them and I had to scratch a number of them out.

Q. But you said those you had already made a rough memorandum, you checked for those alone?

A. I may have collected a few more in my search because I took the date '44 and down to '45—of course they had to have two poll tax receipts.

Q. Then you went further than just the books in your office?

A. I had to go to the sheriff's office to see whether or not they were eligible insofar as paying poll tax.

Q. But you did find eight in every respect qualified?

A. So far as paying poll tax was concerned.

Q. Did you tell us how many books you searched in order to get those?

A. I can't recall.

Q. Do you recall whether you went any further than those constituting the City of Meridian?

A. That is all I checked, in the City of Meridian.

Q. Then that would mean you did not look in but eleven books?

A. Just the registration books inside the city, because there are thirty-eight precincts outside the city and eleven in.

[fol. 26] Q. You mean there are thirty-eight outside the city in Beat One?

A. Yes, sir; and I could not search them all because I got no remuneration for the service I rendered to start with.

Q. Yes, sir; I understand.

By the Court: Let me ask a question now. I want the record to reflect the facts.

By Mr. Broadway: That is what I am trying to get.

By the Court:

Q. I want to ask one question. You don't mean to say there are thirty-eight voting precincts in Beat One outside the city?

A. Not in Beat One. In the entire County.

By Mr. Broadway: I am glad you corrected that.

Q. Then there are forty-nine voting precincts in the whole county at large?

A. Yes, sir.

Q. Now, how many voting precincts are there outside of the city of Meridian in Beat one? Can you tell me?

A. Well, now, there is Russell, Marion, Topton. That is three. Let's see, Bates Store, four. I think there is about five all told.

Q. Now, Mr. Ferrill, can you tell me approximately the time last year it was you got up that information?

A. I can't recall. I can't recall the date, Mr. Broadway.

Q. All right, sir, then you can't tell me whether it was after the April meeting of the Board of Supervisors or not? [fol. 27] A. No, sir; I cannot.

Q. By the way, do you recall whether the list of names for the jury box for the past year was made up and prepared at the April meeting of the Board of Supervisors in 1945 or not?

A. No, sir; I cannot.

Q. I can get that from other witnesses. I just thought maybe you might know. Now, Mr. Ferrill, have you now any judgment that you could give the court as to the number of members of the colored race whose names appear upon your registration books in, say, Beat One?

A. Well, I declare that is a very hard question for me to answer because I have not checked.

Q. I know, Mr. Ferrill, you would not know without a count, but what I asked was if you could give the court, if you have any such judgment, your present best judgment as to the number of members of the colored race whose names appear upon the registration books in your office in Beat One?

A. I don't think it would exceed fifty. Half of those are women. That is approximately. Absolutely no degree of accuracy.

Q. That is your judgment?

A. Not over twenty-five maximum of men?

Q. Twenty-five men and women?

A. I would think so.

Q. That is in Beat One?

A. Yes, sir.

Q. Of course, we understand that includes the territory inside the city and outside the city that comprises Beat One? In other words, all the beat?

[fol. 28] A. Beat One outside the city and the city proper.

Q. Now, Mr. Ferrill, that is with reference to Beat One. Have you any judgment as to the number of the members of the negro or colored race whose names appear upon your registration books in your office, and of which you are the custodian, in any other of the four beats of this county?

A. No, sir.

Q. You are resident yourself, resident of Beat One?

A. Yes, sir.

Q. And the City of Meridian?

A. Yes, sir.

By Mr. Broadway: Mr. Ferrill, I believe that's all. Take the witness.

Cross-examination.

By Mr. Lobrano:

Q. Mr. Ferrill, you said when you looked for those eight negroes, you don't know when it was, whether it was before this present grand jury was put in the box by the Board of Supervisors or not, do you?

A. Let's see, Mr. Lobrano, I just can't recall the date to save my soul.

Q. You don't remember whether it was before April 1st?

A. No, sir.

Q. You do know you had considera-l- difficulty in trying to find eight negroes who appeared to be qualified voters in the whole of Beat One?

A. That is true.

[fol. 29] Q. And you did that when you searched records of Beat One? You did not go to boxes outside the City of Meridian, small boxes?

A. No, sir; just inside the city.

Q. And you searched just boxes inside the City of Meridian in order to find eight negroes who appeared on that record as qualified electors?

A. Yes, sir.

By Mr. Broadway: May we interpose an objection to that on this count. In the first place the witness has stated he selected names of parties he was going to look for, or whose names he was going to look for in advance. And in the second place, the law requires the Board of Supervisors, in making up their jury lists, to use the registration books as a guide. It does not require them to find out if the books are up to date. It does not require them to go any further than the registration book. In order that the Board may more conveniently discharge that duty, it is enjoined upon the Circuit Clerk in March—I believe it is—of each year, he has to certify to the Clerk of the Board of Supervisors those persons whose names do appear upon that, in order that they may, without getting the names themselves, know whose names are on that registration book. Therefore, it does not require them in making a list and determ--ing whose names go on that list, to go any further than those books, and the point we are making here is that at no time within the period of time the testimony covers—I don't know just how long it will cover—has the names of any colored man or negro been placed upon that list by the Board of Supervisors. Therefore, the registration book would be the best guide as to that.

[fol. 30] By Mr. Lobrano: In the first place, he is on cross-examination. I have a right to try to find out what he went into. In the second place, we are not arguing the law. I disagree with him what the law is. The law requires them to go further. It requires the Board of Supervisors to go further and not only get qualified electrors, but men of sound judgment.

By the Court: I am going to overrule the objection.

By Mr. Lobrano:

Q. Now whether they are qualified jurors you don't know, do you, Mr. Ferrill, because you don't know whether they were of good character or not, and with that much searching you just found eight qualified electrors?

A. That's right. I didn't know until I searched the poll book.

Q. Regardless of how you did it, you may have gotten some in your mind, but you searched those books and had difficulty in finding it?

A. Yes, sir.

Q. And I believe it took you two days to do that?

A. It took me too long.

Q. You stated—I believe the record reflects it—that in finding them you examined to find the qualified electorate on the face of the books that came from the populace Beat One, which is the City of Meridian proper.

A. Yes, sir.

Q. And you looked on the records of the registration books and the poll books inside the City of Meridian, and you say [fol. 31] frankly there were some boxes outside? The main voting populace is inside the City of Meridian, is it not?

A. That's right. Yes, sir.

By Mr. Lobrano: That's all.

Re-direct examination.

By Mr. Broadway:

Q. Now, Mr. Ferrill, in the light of the questions he asked you, I want to ask you, I think, just one more question. You stated to the court on your direct examination that you wrote down from your own memory roughly the names of the negroes whose names you were going to look for in the books.

A. Mr. Broadway, I didn't do that until I went to the registration books and picked these names out that I thought would be favorable insofar as being qualified was concerned. I didn't just out of my mind, because I don't know enough colored people in Meridian to sit down and make a memorandum of eight or ten people.

Q. Well, I misunderstood you.

A. For instance, I went to precinct one and precinct eight and precinct three, maybe several of those boses where the population is larger, don't you know, of the negro race and picked these names out. But I didn't sit down and just write them off because I am not familiar.

Q. (Interposing:) Wells, at the time your went to your books, did you go there looking for certain names or just anybody?

A. I only had one name in my mind. I recalled this Professor Harris used to be principal of the negro schools here.

I thought he would fit in as a juror, you know, for the Federal Court, as I recall that.

[fol. 32] Q. But there you went further, as you stated, than simply the registration books?

A. Yes. I had to go in the sheriff's office and check.

Q. Now, Mr. Ferrill, you are required by law, as I am sure you understand, to certify to the Clerk of the Board of Supervisors in March, I think, of each year the names of persons appearing on your registration books. Do you so understand?

A. I have never done that, and I don't think it has been done in prior administrations according to my knowledge.

Q. You have not done that since you have been Clerk?

A. No, sir; I sure haven't. It never has been done.

Q. Do you know then, of your own knowledge, whether members of the Board come into your office and make any search of the registration books for names for jury service?

A. They come in and search the poll books, not the registration books, the poll book.

Q. You have not then, since you have been Clerk, in any wise furnished to the Clerk of the Board of Supervisors, or members of the Board any statement from your registration or poll books as to the names thereon?

A. Qualified electors?

Q. Wells, they may or not be qualified electors in every respect, but have you at any time since you have been Clerk prepared or presented or delivered to either the Clerk or the Board of Supervisors, or members of the Board, or any of them, a statement from your registration and the poll books to show the names contained thereon?

[fol. 33] A. No, sir; it would take me about six months to get that up. That is an absolute impossibility, physical impossibility.

Q. Then, Mr. Ferrill, if I understand you, it has been the practice, insofar as your observation and experience has extended, for the members of the Board themselves to come into your office and make such examination of the registration and poll books as they desire with a view to selecting——

A. (Interposing:) From the poll books. They ignore the registration books.

Q. Just don't look at the registration books at all?

A. No, sir; because the poll books is representative of who has actually voted.

Q. And you have known them to do that in the preparation of their jury lists for the county?

A. Yes, sir.

Q. Mr. Ferrill, do you know, of your own knowledge, whether or not the jury list from which the jury box was filled for the year preceding the time they just refilled it, just a few days ago, do you know whether or not the jury list for that box was made up in April of last year or not?

A. No, sir; I can't recall the date, Mr. Broadway.

Q. Then you don't know when it was made up?

A. We have so much jury down there, we can't keep it in our minds.

Q. I might have asked you this question. If I have I beg your pardon. But do you know whether or not in that jury box up until it was exhausted of its names here a few days ago, upon being refilled, contained the names of any member [fol. 34] of the negro race?

A. I am not aware of the fact, and I can't tell you so.

Q. As I understand it, Mr. Ferrill, the names in the box were all exhausted except from Beat One at the time they emptied it, and there was not a great number of those in there?

A. I think so.

Q. Then it follows that all those before that had either been called up for jury service and excused, or served on the jury?

A. Yes.

Q. Now you do tell the court none of those were negroes. That's true, isn't it?

A. Well I can't answer that because I didn't go through and take each name, you know. I can't answer that with any degree of accuracy.

Q. I am talking about names taken from the books?

A. I don't recall any negroes on there—not from my observation.

Q. You would not state, as a matter of truth and fact, there were no negro names on there?

A. No, sir; I couldn't swear to that. There may have been some on there.

Q. But you do know, so far as your observation and knowledge and seeing the courts go on is concerned, there has been no negro on the jury or drawn for jury service in the past how many years?

A. Well, I have been around the courthouse here——

Q. (Interposing:) Fifteen or twenty years anyway?

A. No, sir; about thirteen years, but I have seen none on there.

[fol. 35] Q. This is 1946. You went to the Circuit Clerk's Office in 1943, and you were nine years in the Chancery Clerk's Office?

A. About thirteen or fourteen years.

Q. You do know during that time no negro name has been drawn for jury service in the criminal circuit court?

A. I don't recall.

Q. Pardon me if I seem boring. Don't you know, as a matter of fact, none have been drawn or summoned for jury service?

A. It could have been possible I just overlooked it, but I don't think it was.

By Mr. Broadway: That's all.

(Witness excused.)

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[fol. 36] Howard Cameron called as a witness on behalf of the defendant, was sworn, and testified on the motion as follows:

Direct examination.

By Mr. Broadway:

Q. Mr. Cameron, has Mr. J. T. McDonald or myself asked you any question off the witness stand touching any phase of this matter now under hearing, except that this morning I asked you about some reports that were made as I understood, were made in the beer election contest?

A. Mr. Broadway, to start with, I presume that I know what the matter under consideration is, but I haven't been officially notified.

Q. Then have Mr. McDonald and I had any contact with you with a view to asking questions or actually asked you questions, other than what I asked you touching the report of the number of qualified electros in the county?

A. No, sir.

Q. You are Chancery Clerk at the present time?

A. Yes, sir.

Q. And have been for how long?

A. Since January, '36.

Q. Prior to that time what connection did you have?

A. I was Deputy Chancery Clerk.

Q. With the Chancery Clerk's office?

A. Beginning with April, 1933.

Q. Then since April, 1933 up to and including the present time you have been in the Chancery Clerk's office?

A. Yes, sir.

[fol. 37] Q. As such, Mr. Cameron, you had certain duties to perform with reference to the making up of jury lists of this county?

A. That is correct, sir.

Q. And just what did you do during that time in connection with the making up of that list?

A. The members of the Board of Supervisors are called upon to prepare a jury list. These Supervisors, acting individually, each go into the Circuit Clerk's office and there secure the registration roll from the circuit clerk. From this roll they prepare a list of jurors in their respective beats. After this list is prepared, it is then turned over to the Chancery Clerk. The Chancery Clerk then copies the list as prepared by them on to the minutes of the Board of Supervisors, following which we then compile and certify a copy of this list and transmit it to the Circuit Clerk.

Q. Now then lest I forget it, Mr. Cameron, have you a very clear judgment as to the *mum*ber of qualified electors in this county?

A. I have my own opinion, but I have been rudely shocked on several occasions. It is strictly a personal opinion.

Q. Would you mind giving the court the benefit of your very best judgment as to the number of qualified electors in this county as, we will say, of the present time?

A. That is a hard thing to reach right now.

Q. I know you can't be accurate, Mr. Cameron. I don't ask for an accurate figure—your very best judgment, please.

A. I would say at the present time roughly between eight and ten thousand qualified electors in the county.

Q. Between eight and ten thousand qualified electors in [fol. 38] the county?

A. Yes, sir.

Q. Now Mr. Cameron, can you and will you give the judge the benefit of your best judgment, your very best judgment,

as to the number of members of the negro race who are qualified electors in this county?

A. When you say qualified electors, I presume you mean those who are registered and those who have paid their poll taxes; also those whom the supervisors feel are competent from the standpoint of being unbiased and fair minded? Am I correct in that assumption?

Q. Of good judgment, sound character—I forget what those are.

By Mr. Lobrano (Interposing): Let's keep the record straight. He asked about electors, no jurors. He is trying to give the qualifications of a juror.

By Mr. Broadway: I will reframe the question in this way.

Q. Mr. Cameron, could you and would you give the court the benefit of your very best judgment as to the number of names of members of the negro race that now appear upon the registration books of Lauderdale County?

A. Frankly I have never given it any consideration but I am of the opinion that there are several hundred of them.

Q. You are of the opinion that there are several hundred of them?

A. Yes, sir.

Q. That is your best judgment in that matter?

[fol. 39] A. Yes, sir; I have never made any investigation at all, but I do know for a fact there are negroes on the registration rolls and I do know for a fact there have been negroes to vote in Lauderdale County.

Q. I don't suppose you know about how many have voted?

A. No, sir.

Q. Well I wouldn't think you would, but I just wanted to get it. Now, Mr. Cameron, during the time that you have been in the Chancery Clerk's office, both as a deputy and as clerk in your own right, has there been the name of a single negro listed by any member of the Board of Supervisors for jury service in this county?

A. I have no way of knowing that, because I never make any inspection of the list. The lists are turned over to me and frankly I turn it over to one of the deputies. It is just clerical procedure with us. I have no reason to make any check and determine who is on the jury list.

Q. And whether they are white and colored?

A. And whether they are white or colored.

Q. And you do, when the lists of the members of the Board are turned over to you, first enter the names on the minutes of the Board of Supervisors?

A. That is correct.

Q. And showing on there, of course, from what beat they are selected?

A. Yes, sir; we set it up on the minutes according to beats and precincts in a great many cases, according to the way it is turned over to us. We set it up on the minutes the way it is turned over to us.

[fol. 40] Q. Then after that is done you make up certified copy, likewise showing precincts and beats, and deliver that to the Circuit Clerk?

A. We make verbatim copy.

Q. And that is certified under the hand and seal of the Chancery Clerk?

A. That is correct, yes, sir.

Q. Now, Mr. Cameron, there is no indication on this list turned over to you by the members of the Board as to whether the persons' names who appear there are white or colored?

A. No, sir.

Q. In other words, there is no little symbol used out there like "w"?

A. No, sir.

Q. Or "c", or anything of that kind?

A. No, sir.

Q. And for that reason you are not able to say that there was not during any of that time the name of any negro listed by any member of the Board?

A. No, sir.

Q. Mr. Cameron, do you or not know that during the time you have been Chancery Clerk and been in the Chancery Clerk's office as deputy that there has been no member of the negro or colored race serve on the grand or petit jury at criminal courts of this county?

A. To serve on the jury?

Q. Yes?

A. I have never known any to serve on the jury.

Q. Have you known of any being summoned for jury service at criminal terms of court in this county?

[fol. 41] A. Frankly I have no way of knowing that. I have nothing to do with summoning jurors.

Q. The law requires, as I understand, that at each term of criminal circuit court in the county after the empanelling of the grand jury and prior to the charge, that the list of names of county and district officers be called?

A. That's right.

Q. You have attended court each time on those occasions?

A. Yes, sir.

Q. And therefore you have seen the empanelling of the grand juries at those terms?

A. Yes, sir.

Q. Have you seen a single negro empanelled on the grand jury during the time you have had any connection with the Chancery Clerk's office?

A. No, sir.

Q. Mr. Cameron, when did the Board of Supervisors make up their jury lists for the year just preceding this one, in other words just prior to the last list they made up?

A. They recently had an adjourned meeting at which time they filled the jury box, and my recollection is it was October, 1945 when they last filled the jury box. I am not positive about that, however.

Q. Do you recall whether or not they filled that box in April, 1945?

A. No, sir; I do not. Frankly, I never give it much thought. It is just a routine clerical proceeding with us.

[fol. 42] Q. I understand. Other than at the October adjourned meeting of last year can you recall whether they filled the jury box or took action to fill the jury box?

A. Oh yes, they are called on at least two or three times to fill the jury box during the calendar year.

Q. Now then, you know at an adjourned meeting in October of last year they did refill the jury box?

A. Don't know whether it was an adjourned or regular meeting. My reason for recalling October was the Supervisors came back at a recent adjourned meeting and one of them raised the question when was the last time the jury box was filled. I remember going in the vault and looking at the minutes to determine when the jury box was filled. As I recall, it was in October, but I didn't pay attention whether it was an adjourned or regular meeting.

Q. Now from October of last year until this recent refilling of the box here within the last few days was there any other action taken to refill that box?

A. None that I recall.

Q. Now did yourself, make any examination of the jury list prepared at that October term?

A. No, sir; other than just to turn them over to the young lady to put on the minutes.

Q. Just the ordinary routine there in the office?

A. Yes, sir.

Q. Now you saw the empanelling of the grand jury at the present term of court?

A. Yes, sir.

Q. There was no negro on that grand jury, was there? [fol. 43] A. None that I recall.

Q. For the record, Mr. Cameron, I don't want to appear to be unduly questioning you, but for the record's sake can you now reflect back on that and tell the court whether, as a matter of fact, there was any negro on that grand jury or not?

A. There were no negroes on this past grand jury that I remember seeing.

Q. And while you can't tell us about any being listed, because you made no check of it, with that view in mind, in previous years that you have been connected with the Chancery Clerk's office, you can however tell us that during your experience in the Chancery Clerk's office that no negro has served upon the grand or petit juries at criminal terms during the circuit court of this county?

A. None that I recall. Let me point out the fact, however, I rarely ever go around the circuit court and I have a definite reason for that.

Q. We are not so interested in the petit juries as the grand jury. You are to be present, as I understand, at the charge of the grand jury?

A. Yes, sir.

Q. Now at any of those terms of court since you have been Chancery Clerk—now you did not have to attend when you were deputy?

A. That's right.

Q. But you have since you have been clerk in your own right?

A. That's right.

Q. At any time during that time has there been a negro on the grand jury at a term of the circuit court in this county?

[fol. 44] A. None that I can recall.

By Mr. Broadway: Take the witness.

Cross-examination.

By Mr. Lobrano:

Q. Mr. Cameron, you stated a while ago that in your opinion there were some, maybe several hundred negroes registered in this county. That is purely Howard Cameron's opinion and based on nothing other than hearsay and is an opinion about it?

A. That's right.

Q. You made no effort to ascertain the number and you are not now undertaking to tell the number?

A. That's right.

Q. Now, of that number registered—you have been kind enough to express an opinion—do you have any opinion as to how many are qualified electors, paid their taxes?

A. So far as I know, there are none.

Q. Would it be rash assumption to presume eight would be a hard number to find during the year 1945, eight qualified electors in beat one?

A. Negroes?

Q. Yes?

A. Yes, sir.

By Mr. Broadway: If the court please we object to that and for this reason: the law is the Board of Supervisors are to use the registration books in making the jury lists. They thereafter are not called upon to determine whether the names they select are qualified electors or not.

[fol. 45] By Mr. Lobrano: The very statute itself says the Board is to select qualified electors, none other.

By the Court: Overrule the objection.

By Mr. Broadway: Note our exception.

By Mr. Lobrano:

Q. So, Mr. Cameron, so far as you now know and are able to say as a fact, you don't know whether there was a single qualified negro elector in Lauderdale County at the time

that Board selected the list they put in the last jury box, do you?

A. No, sir.

By Mr. Lobrano: That's all.

By Mr. Broadway: May we be understood as objecting to this line of testimony without repeatedly entering an objection in the record?

By the Court: Yes.

By Mr. Lobrano: I am through.

Redirect examination.

By Mr. Broadway:

Q. Mr. Cameron, when you answered that there were the names of several hundred negroes appearing upon the registration books in your very best judgment, was that or not a judgment formed upon the basis of your connection [fol. 46] with the clerk's office and your duties in listing the juries, the names of men selected for jury service?

A. No, sir.

Q. And matters of that kind?

A. No, sir; that was formed through a personal matter. It has been my policy in the past years to mail out Christmas cards to those people who voted in Lauderdale County. I have gotten my lists and addresses from the registration rolls.

Q. Then you did not depend on what somebody else told you in making up that estimate, your judgment?

A. I did not pay any attention to that. I know there have been some on there. I know on one or two occasions I have had negroes meet me on the streets of the city and tell me they got Christmas cards from me.

Q. And that is the only thing this opinion which you depended for your information in forming, your best judgment as to the number of names appearing on those rolls?

A. Yes, sir.

By Mr. Broadway: That is all. Thank you very much, Mr. Cameron.

(Witness excused.)

Adjournment here taken until 12:45 P. M.

Pursuant to the adjournment noted above, Court met at 12:45 P. M., and the following proceedings were had:

[fol. 47] W. Y. Brame called as a witness on behalf of the defendant, was sworn and testified on motion as follows:

Direct examination.

By Mr. Broadway:

Q. You are Mr. W. Y. Brame, Sheriff of Lauderdale County, Mississippi?

A. I am.

Q. When did you take office, Sheriff?

A. January 3, 1944.

Q. And prior to that time what official position, if any, did you hold in Lauderdale County?

A. Tax Assessor.

Q. And how long did you hold that office please?

A. Twelve years.

Q. Then you have been better than fourteen years a member of the official family of officers of this county?

A. I have.

Q. Sheriff, there was summoned by your office, and under your supervision, jurors for the present term of court. That's correct isn't it?

A. Yes, sir.

Q. From which body of men both the grand jury and petit juries of this term were selected?

A. Yes, sir.

Q. Did you personally make service on any of those men?

A. No, sir; the deputies would handle any summoning of the juries. We handle as many as we can personally over the telephone and by cards.

[fol. 48] Q. Do you now recall how many different deputies you had working on them?

A. Well they take the jury lists as they come in there. We generally make copies of it and if they see anyone on that jury list they generally notify them, but we use a double check system on it. I mail cards and in addition to that we take the telephone. I called a number of them myself over the telephone, notifying them of jury service.

Q. Sheriff, was there a member of the negro or colored race in that body of men?

A. Not in this panel.

Q. I am talking about the ones summoned for jury duty at this term and from which the grand jury was selected?

A. Not in this, no, sir.

Q. Have all the juries for this term already been summoned by you all?

A. Have all of them been summoned by my office?

Q. Have all the juries for this term of court, including this next week, already been summoned by your office?

A. Yes, sir.

Q. And you state there is no member of the colored race from either the list the grand jury was selected from or the other from which the grand jury was secured and from which the petit juries were secured?

A. Mr. Broadway, I don't know whether they are all white or not on them. Now since I have been sheriff we have had some colored men in the jury box. One has been summoned but did not report.

[fol. 49] Q. I was going to get to that a little later.

A. We have several on the different beats we know out here. I don't know personally. I know most of them but I couldn't say whether they are negroes or not.

Q. Those you do know, you know are white folks?

A. Yes, sir.

Q. And you know that so far, up until now there has not been empanelled either on the grand or petit jury a member of the colored race?

A. Not at this term.

Q. Now then you said something about there being one summoned sometime ago since you have been sheriff. For what term of court was that?

A. I don't remember.

Q. Well let's see, you took office in January, 1944?

A. It was since Mr. Willie Wright has been Supervisor.

Q. And he was from Beat One?

A. Yes, sir.

Q. I believe you said he did not report?

A. He did not.

Q. Other than that one negro——

A. (Interposing:) That is the only one that I recall, Mr. Broadway.

Q. Other than that one negro, can you tell the judge whether during the entire time you have been an official of this county, including your terms as tax assessor, there has

been a negro drawn, summoned, empanelled, or placed upon the jury, grand or petit, at a criminal term of court of this county?

[fol. 50] A. Now what is your question, Mr. Broadway?

Q. Other than that one negro whom you have just referred to as being summoned for jury service since Mr. William Wright has been Supervisor of Beat One, other than that, can you tell the court whether a single negro from any part of the county has been summoned, has been listed, his name placed in the box, drawn or summoned, or served upon the grand or petit jury at a criminal term of court of this county?

A. Since I have been sheriff or connected with this county?

Q. Since you have been connected with this county, all the period together?

A. I had no contact with the juries during the twelve years I was tax assessor, Mr. Broadway.

Q. All right then, since you have been sheriff you know of only one being summoned for jury service?

A. That is the only one I know of.

Q. Now let's see, when you were tax assessor you were required, weren't you, to attend the empanelling of each grand jury and hear the judge's charge?

A. Yes, sir.

Q. And you did that?

A. Generally; yes, sir.

Q. There may have been times you couldn't be there that you got excused, but as a general rule you made it your practice to comply with that?

A. Yes, sir.

Q. During all that time, and on occasions when you did [fol. 51] attend the empanelling of the grand jury, and hear the charge to it, and answer to the call of your name when the roll of county and district officers was called, did you observe or note that a single negro was called for grand jury duty?

A. I have never seen one on the grand jury, Mr. Broadway. I don't know whether any was called or not. But I haven't seen one on the grand jury.

Q. What I mean by "called," Mr. Brame, was called in the court room, his name called, and he come up and take the box?

A. Idon't know of any instance of that. I was not present all that time. I would be present when they were empanelled and charged. I was not present until they called the county roll of officers, then I would come on up.

Q. That would be then after the empanelling of the grand jury?

A. That's right.

Q. Then you would see the grand jury as they sit there empanelled?

A. Yes, sir.

Q. During all that time, and following your general practice of being attendant on the court at the call of that list of officers, did you know or observe a single negro was ever on the grand jury at a criminal term of the circuit court of this county?

A. I did not.

Q. Mr. Bram*d*, do you have—I can understand you may not have—but do you have any judgment as to the number of negroes who are registered on the registration books of the county?

A. No, sir; I would not have any accurate knowledge of that, Mr. Broadway. In going over the rolls from time to [fol. 52] time maybe I would run across where a negro had registered, but I have paid no special attention to it.

Q. Then you would think that you had no judgment about the matter enough to give the court the benefit of your very best judgment as to the number of negro names contained on the registration rolls?

A. Well I would think there are maybe forty or fifty.

Q. Would that be your best judgment as to the number obtaining on the registration rolls?

A. Registration, yes, sir.

Q. But as to what time, Mr. Brame, as of the present or some time in the past, that was for how far back?

A. Well say '43.

Q. In '43?

A. Yes, sir.

Q. Does that same, or about that same number, your judgment as to the number, prevail as of the present?

A. Well, I haven't checked it since that time, Mr. Broadway. Maybe a few have registered since that time but I have no knowledge of it.

Q. Is it your judgment that there would be more now, or the same number, or fewer than there was at that time?

A. Well I imagine it is about the same.

Q. And you said that was forty or fifty?. Do you have any way of informing the court whether those were residents of beat one or some of the other beats of the county?

A. I have never seen one registered in any beat other than the city of Meridian.

[fol. 53] Q. Then that would mean that everyone that you say were residents living in the City of Meridian?

A. City of Meridian, yes, sir.

Q. And that, of course, for the sake of the record, is a part of Beat one?

A. Yes, sir.

Q. Sheriff, do you know whether or not the members of the board of supervisors in preparing their jury lists during the year resort to any books in your office for that purpose?

A. No, sir; I do not. Now Mr. Wright has been in and maybe one of the other supervisors has been in looking over the lists in our office. We have a list showing everybody who has paid poll tax, and Mr. Wright has been in and I don't recall the others. Mr. Wright has been in, in order to check the qualified electors, and has made reference to our cards on several occasions, just how many I don't know. Now the other supervisors—I have told them we had the lists, the record in our office, and they were welcome to use them any time in filling the jury box and refer to them as to whether they were qualified electors or not.

Q. But you don't know of any other member of the board doing that other than Mr. Wright?

A. Well I have seen Mr. Johnson in there. I have seen Mr. King. And in fact I believe I have seen all the members of the board in there with some reference, but I don't know just to what extent.

Q. And you don't know what particular part of your records they were searching?

A. No, sir; they were welcome to use our records any-[fol. 54] time, and they have been in there two or three times, but I don't know just what they have done. That is their job. We have always tried to cooperate anyway we could with them, but whether the other members have gone in there and copied them or not—the other beats are smaller than beat one, and they know pretty well who are qualified electors, the outlying beats.

Q. Being smaller they are more thoroughly acquainted?

A. Yes, sir; Mr. Wright is a new supervisor. He refers to our records generally to see who has paid and who has not.

Q. Sheriff, during the last year did you have anything to do with the listing of the names of eight negroes for jury service in the federal court?

A. No, sir.

Q. You had no part in getting up that list of names?

A. No, sir.

Q. Sheriff, when I asked you there about the number of names, I don't recall whether that was confined to the registration books or qualified electors, do you?

A. Registration books.

Q. Can you tell me approximately in your best judgment how many negroes there are who are qualified electors, that is who are both registered and who have paid their poll tax on or about the first of February as reflected by the records in your office?

A. Well I don't know what the records in the office show, Mr. Broadway. I have personal knowledge only of one negro paying a poll tax.

Q. Personal knowledge of only one paying a poll tax?

A. Yes, sir.

[fol. 55] Q. You don't yourself personally attend to the collection of poll tax?

A. No, sir; I am not able to write all the poll tax receipts.

Q. What I mean, sheriff, you have deputies to attend to that?

A. Oh yes, Yes, sir. Most of the negroes that we have registered there, Mr. Broadway, are negroes that are above the age of sixty, that don't pay a poll tax after that time. Maybe they will come in there and register and then they are exempt from the poll tax. I can recall several old negroes I have known maybe for thirty-five years. I would meet them on the street and they would discuss their problems. I know they are registered; I don't know whether they vote or not.

Q. And there are some of those that that situation don't apply to that are under that age?

A. Some of them have registered under that age.

Q. And therefore if the supervisors use the registration books alone, or look to that as a guide in securing names of men for jury service, they would almost inevitably run

across the names of negroes on there under sixty years of age?

A. The negro names are on the poll books, transmitted from the registration books to the poll books, like any other names.

Q. Sheriff, prior to your becoming tax assessor did you with any constancy or regularity frequent the court room of this county, and particularly criminal terms of this court?

A. Before I was tax assessor?

Q. Yes?

A. No, sir.

By Mr. Broadway: I believe that's all. Take the witness.

[fol. 56] Cross-examination.

By Mr. Lobrano:

Q. Sheriff, you said in your judgment about forty were registered. Of that number, of course, there are about an equal of males and females?

A. I would imagine so.

Q. And so far as you know, of your own personal knowledge, you don't know of a single qualified negro voter here when this grand jury was taken out of the box, do you?

A. One is the only one that I know.

Q. Only one that you know about. And they don't pay their poll taxes very much in this county, do they sheriff?

A. No, sir.

Q. They are not interested enough in the voting to pay the poll tax? That is the truth, isn't it? And it requires the payment of two poll taxes, to have two poll tax receipts paid prior to February 1st to make them qualify in any election, and they just don't pay their poll tax very much?

A. That is the general practice.

Q. They are not interested in voting here very much?

A. No, sir.

Q. They can't carry on their other affairs of life and be interested in civic affairs and voting? Now, Sheriff, the City of Meridian, the precincts inside of the largest precincts?

A. Yes, sir.

Q. In Best One, are they not?

A. Yes, sir.

Q. And so far as there being any qualified electors I be-
[fol. 57] lieve you stated, you don't know of your own personal knowledge except of one negro qualified elector in the county?

A. Yes, sir.

Q. That's all, Sheriff.

(Witness excused.)

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[fol. 58] Mrs. Addie Rivers recalled for further

Direct examination.

By Mr. McDonald:

Q. For the record give the report of your official position in Lauderdale County?

A. Deputy Circuit Clerk.

Q. For the court and the purposes of the record, will you identify those books there?

A. These are poll tax books, Precinct Seven, City of Meridian.

Q. Is or is not that the books that the Board of Supervisors consult to draw a jury?

A. It is.

Q. I am going to give you a short list of names and those names are arranged alphabetically so you can turn rapidly to the names I call?

A. They are.

Q. Does or not that book show where a voter is colored or white?

A. It does.

Q. Does or does not that book show whether delinquent or not delinquent?

A. It does.

By Mr. McDonald: I wish to introduce them as evidence in this case.

By the Court: You mean the entire books, or are you
[fol. 59] just identifying the books so you can call attention to special portions of the books?

By Mr. McDonald: That is all I want. I am not introducing those whole books.

By the Court: You are just identifying the books as being the official poll tax books and then with reference to

what they contain will call attention to special portions without introducing the whole books as a part of the record?

By Mr. McDonald: And let the record show even though they are delinquent.

Q. E. L. Henderson? If it takes too much time pass it and show it not found?

A. I don't find it.

Q. A. Green?

A. I don't find A. Green.

Q. Macon, James D.?

A. I don't find him.

Q. May I look at the names and point them out to you?

A. Uh-huh; maybe your eyes are better than mine.

Q. As I go along there, Mayes, E. A., tell the court whether or not it is a member of the colored race?

A. So marked on the books.

Q. Tell him whether or not, under this record, he is a qualified elector of Lauderdale County insofar as this record shows?

A. Insofar as this record shows, he is.

Q. Gus Morgan, race?

A. Colored.

[fol. 60] Q. Whether or not qualified?

A. He is so marked. Over age.

Q. Just please give the qualification. Meshow, C. A.?

A. He is colored.

Q. Whether or not he is qualified?

A. He is.

By Mr. McDonald: Does anybody know whether or not Frank Reese is dead?

By the Court: I believe he and his wife are both dead.

By Mr. McDonald:

Q. Skip the name. Reed, W. A., Jr.?

A. He is colored.

Q. Qualified or unqualified?

A. Qualified?

By Mr. McDonald: I am not going to go through the entire book, your Honor. I am going to get through in a mighty few moments. The court is being very patient and I could not get this worked up properly. I only worked on it since court adjourned.

Q. James, T. L.?
A. He is colored, qualified.
Q. Johnson, L. E.?
A. He is colored and qualified.
Q. Lovelady, S. J.?
A. Colored, qualified.
Q. Macon, James D.?
[fol. 61] A. Colored, marked delinquent '39.
Q. What does that mean on the present record?
A. I could not tell you. Qualify so far as the record shows.
Q. Qualified so far as the record shows? Mays, E. A.?
A. We have that one.
Q. Have we?
A. That is where you started just now, and you have gone from there all the way through.
Q. Henry Strayhorn?
A. He is colored and qualified.
Q. Smith, Cor?
A. Colored, qualified.
Q. Smith, J. J.?
A. Colored, qualified.
Q. Claud Williams?
A. Colored, qualified.
Q. State for the record how many boxes at the City Hall?
A. Three.
Q. State for the record how many boxes we have covered?
A. Two.
Q. This is just one voting precinct in Lauderdale County?
A. Right.

By Mr. McDonald: Lonnie, I know he won't object to your helping out a poor helpless guy. He offered you that this morning.

By Mr. Broadway: Well I don't know what you have shown, Mr. McDonald.

[fol. 62] Q. What two or three books has he covered here designating the precinct and letters?
A. He covered I to R and S to J.
Q. Of precincts?
A. Seven.
Q. Of the same precinct in the City of Merdian?
A. Yes, sir.

Q. In other words, only one precinct, and that in the City of Meridian, and only two divisions of that?

A. That's right.

Q. And there has been found how many? Did you keep up with them?

A. I couldn't count them.

Q. Apparently that was the selection of precinct books at random, wasn't it?

A. Yes, sir.

By Mr. Broadway: I believe that's all.

Cross-examination.

By Mr. Lobrano:

Q. Mrs. Rivers, you don't know how many of these that the names there are dead, do you?

A. I do not.

Q. Do you know old Fred Macon down here? He is dead, isn't he?

A. That is what I understand.

Q. You don't know how many of them on here are dead?

A. No, sir.

[fol. 63] Q. You don't know how many of them appear to be women?

A. No, sir.

Q. You don't know how many of them have moved out of the county? You don't know even though on the record, you don't know how many paid poll tax?

A. No, sir; the last time that book was purged was in '42.

Q. You don't know whether there is a single one of them qualified today, do you?

A. I do not.

Q. You don't know whether a single one was qualified the first day of February?

A. I do not.

Q. You don't know whether a single one qualified as before April of this year?

A. No, sir.

Q. Nor of October of last year?

A. No, sir.

Q. You don't know anything about their judgment or their character, do you?

A. I do not for I do not register them.

By Mr. Lobrano: That's all.

Re-direct examination.

By Mr. Broadway:

Q. Now those names you called off were appearing on the poll books?

A. Yes, sir.

[fol. 64] Q. And therefore had to be registered before they could appear on that book?

A. Yes, sir.

Q. And you say these records were made or compiled in '42?

A. They were purged last in '42.

Q. They were purged last in '42?

A. And '43.

Q. And they are the current official poll books for the precincts covered?

A. They are.

Q. You answered the District Attorney that you did not know how many of those were women or how many dead, other than the ones whose name he mentioned, or who you understood were dead? You don't know whether any of them are dead or whether any of them are woman, do you?

A. No, sir; I do not.

By Mr. Broadway: I believe that's all, if the court please.

(Witness excused.)

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[fol. 65] Tom Johnson called as a witness on behalf of the defendant, was sworn and testified on the motion as follows:

By Mr. Lobrano: Before you use him, if he is sick there is another motion coming up and I want the right to put in the record and have used on that other record portions of Mr. Johnston's testimony. Rather I want his testimony in connection with that motion for the state.

By the Court: Will you agree to that, Mr. Broadway?

By Mr. Broadway: O yes, sir.

By the Court: Mr. Johnson told me after dinner he did not feel well, that he had had the 'flu and did not feel equal to being here today.

By Mr. Broadway: If I had known that, I could have used Mr. Johnson out of order. It was not called to my attention.

Direct examination.

By Mr. Broadway:

Q. Mr. Johnson, you are a member of the Board of Supervisors of this county?

A. Yes, sir.

Q. From what beat, please, sir?

A. District two.

Q. And how long have you been such?

A. Oh, I couldn't tell you—about twenty-five years, thirty years.

[fol. 66] Q. Has that been continuous and consecutive?

A. No, sir; not altogether.

Q. How much continuous and consecutive service have you had?

A. Since '28.

Q. And from that time back how much all put together, if you can recall?

A. I didn't get your question.

Q. From that time back, from 1928 back, how much time did you have, how much service as Supervisor did you have?

A. I served twelve years before that, but I was out twelve years.

Q. I understand the twelve years before that was not consecutive?

A. No, sir.

Q. Now when did you first serve as Supervisor?

A. 1904.

Q. Was there more than one term intervening between any period of your service?

A. No; I served twelve years and then I was out twelve years.

Q. That's right. Excuse me. You said that and I didn't catch it. Mr. Johnson, as of the present do you know, or if you don't know, would you give us the benefit of your best judgment as to the number of negroes in your beat whose names appear upon the registration rolls of this county?

A. I don't know of a single one; not now.

Q. I mean as of the present?

A. As of the present.

[fol. 67] Q. Have you or not recently made a search of the registration rolls of this county?

A. I have.

Q. And your beat, with reference to determining that very question?

A. Yes, sir.

Q. As a result of that search you did not find any?

A. I do that every time we make up a jury list.

Q. I understood that was the proper case because the law required it?

A. Yes, sir.

Q. And you did not find any on your last search?

A. I don't recall any.

Q. And when was that last search made?

A. About thirty days ago.

Q. And when was your search of those registration rolls made prior to making up the jury lists from which the grand and petit juries for this term were secured?

A. What time prior?

Q. Maybe I better restate the question. Prior to your last search for the purpose of making up your jury lists for the present jury box, before that, when was it you made a search and made up your jury list to go in the jury box?

A. I couldn't tell you. I don't remember.

Q. Do you recall whether it was October last year or not, and probably at an adjourned meeting of the Board?

A. That we made our jury lists, you mean?

[fol. 68] Q. Yes, sir?

A. Sometimes that happens, when you run out of juries. It has been a hard proposition getting a jury in this county.

Q. Do you recall whether or not you members of the Board did that at the October term, regular or adjourned session last year?

A. I don't recall. The records will show that.

Q. And you don't recall when the jury list made up by the Board by means of which the jury box was filled, and from which the members of the grand and petit juries for this term of court was secured?

A. I don't recall. The records will show.

Q. Mr. Johnson, in making up the jury list for last year, whenever it may have been, whatever month it may have been, did you likewise search your registration books for negroes?

A. Not specially for negroes—search it for everybody.

Q. Did you then have negroes on there?

A. I don't know of one on the books.

Q. You mean by that they may have been on the books, but you did not come across it?

A. I doubtless wouldn't have known if I had come across it. I don't know everybody, but lots of people in district two.

Q. I understand. And as far as you went, you did not come across the name of any negro?

A. No, sir; — did not.

Q. Then you would not say, would you, that the registration rolls at that time did not contain the name of any negro in your district in making up the jury list last year?

A. Yes, sir; I would say there was none there. My best [fol. 69] judgment and opinion.

Q. Your best judgment and opinion that was not any?

A. No, sir; and have not been for several years.

Q. For how many years please?

A. I would not say.

Q. I don't want to try to have you be exact and accurate, but can you estimate the number of years you say that would cover?

A. No. I could not tell you.

Q. As much as eight to ten years?

A. If there has been a qualified negro on those books in the last ten years, I don't know it.

Q. In the last ten years? Now, Mr. Johnson, prior to that ten years—that would carry us back before '36—prior to that ten year period and prior to 1936 were there the names of any negroes on the registration books in your district?

A. Yes, sir; there have been.

Q. And was that in 1936 or prior thereto?

A. I would not say when it was.

Q. Just sometime prior thereto?

A. Yes, sir.

Q. Can you tell us how many, or about how many?

A. I don't know of but one that used to keep his name on the registration books?

Q. That used to keep his name on it?

A. Uh-huh.

Q. Was he at any time listed as a juror from that beat?

A. I could not tell you that.

[fol. 70] Q. Did you, yourself, ever list him as a juror from that beat?

A. No, sir. No, sir.

Q. How many qualified electros approximately are there there in your beat?

A. Oh, five or six hundred.

Q. And how does that compare with the registration in your beat?

A. You mean qualified electors?

Q. That was the first question. How many qualified electors there were. The next question, how does that compare with the number registered in your beat?

A. Well they are all supposed to be registered or they wouldn't be qualified.

Q. Then be the same number?

A. Why sure.

Q. But they may be registered and not qualified?

A. Why sure, that could happen too—a good many registered and not qualified.

Q. Then in all of your experience as a supervisor from Beat Two you have never known of but one negro who was registered on the registration books from that history?

A. I don't recall but one.

Q. You don't recall but one?

A. No.

Q. Then, Mr. Johnson, if I understand you, you would not say there were not others?

A. No; I could not say there were not others.

[fol. 71] Q. Then whether there was one or more, or a dozen of them, you, yourself, never listed the name of a negro from that beat for jury service?

A. No, sir; I don't know if I was on the Board when this old darky had his name on the rolls. I did not list him on there because he was very old, died eight or ten years ago.

Q. Was he above sixty at the time you knew he had his name on the books?

A. Yes, sir; when he was registered he was above sixty.

Q. At the time he registered he was above sixty?

A. I don't know how long he had been registered.

Q. Mr. Johnson, in making up your jury list since you have been supervisor have you made any effort at any time to determine whether in the registration books for your beat there were registered negroes with a view of listing them for jury service?

A. I have never had that in mind, because we did not have any darkies of consequence in the beat, have not yet. I have enough troubles without going into all those details.

By Mr. Broadway: I can readily understand that sir. I believe that's all for Mr. Johnson.

Cross-examination.

By Mr. Lobrano:

Q. Mr. Johnson, in addition to finding out whether or not a man is a qualified elector you try to do as the law says when you put them on that list, try to find men that have good intelligence, fair character and sound judgment, do you not?

[fol. 72] A. We do. We are supposed to; yes, sir.

Q. And naturally there are a lot of men in that beat who have never served on juries?

A. I don't say a lot of them.

Q. But there are some men in that beat who never would be put in the jury box because they lack those essentials; isn't that true?

A. Yes, sir; that is true. There are certain qualifications that they have got to meet before they can serve on the jury.

Q. And it is true that the negroes are not very much interested in taking part in elections? They are more or less interested in other things of life rather than elections?

A. Don't seem to be interested at all, the negroes don't. The darkies don't seem to be interested at all.

By Mr. Broadway: On the motion that is coming up let the record show, Jack, before you get in that, may I ask him another question?

By Mr. Lobrano Go right ahead.

Re-direct examination.

By Mr. Broadway:

Q. Mr. Johnson, what other books or records do you, as Supervisor, look over or check in making up your jury lists?

A. I take the registration books and refer to the poll tax books to see if the poll tax has been paid. That is in the sheriff's office. Then I take my registration books, and if they are registered and have paid the poll tax within two years, by then if they are qualified otherwise, I list [fol. 73] them as jurors.

Q. But if they are registered alone?

A. (Interposing): And they have not paid poll tax——

Q. (Interposing): And they have not paid poll tax?

A. No, sir; I don't put them in.

Q. And if they are registered and have paid the poll tax, and you, yourself, don't consider them of good intelligence, sound judgment and fair character, you, yourself, don't list them?

A. No, sir; I don't.

Q. As a general thing, the vast majority of whites meet those requirements of good intelligence, sound judgment and fair character?

A. Not all.

Q. I would hate to say all. The vast majority of them do though, don't they?

A. The vast majority do; yes, sir.

Q. Therefore you list whites insofar as that qualification is concerned generally, don't pay so much attention to it, as you do regard them of good intelligence, sound judgment and fair character?

A. There are some exceptions. In other words, suppose a man is in trouble all the time, been convicted of selling whiskey, any other violations of the law, I don't consider him worthy of a juryman.

Q. When you have that knowledge certainly you don't, and you are right, but where you don't have knowledge personally and should not have any, you go on the assumption he will meet that qualification?

A. Yes, sir; as far as I know I try to put him in there if [fol. 74] he is qualified in that request.

By Mr. Broadway: I believe that's all.

[fol. 75] JUDGE J. A. RIDDEL called as a witness on behalf of the defendant, was sworn and testified on the motion as follows:

Direct examination.

By Mr. Broadway:

Q. You are J. A. Riddell, Judge of the county court of this county?

A. Yes, sir.

Q. And how long have you been such?

A. Three years and two months, will be at the end of this month.

Q. Prior to that time you were, of course, a practicing lawyer at this bar?

A. Yes, sir.

Q. How long have you been practicing law at this bar?

A. Well actively since 1931, had a license to practice since 1916.

Q. But you have been actually and actively engaged in practice since 1931 up to your election as county judge?

A. Yes, sir.

Q. Now, Judge, prior to your holding the county judgeship, what other, if any, official positions did you hold in Lauderdale County?

A. First I served twelve years as County Superintendent of Education and served one session in the Mississippi Legislature and a short interim term as county attorney.

Q. How long did you serve as county attorney?

A. Oh I think about sixty days maybe.

[fol. 76] Q. That was by an appointment, interim appointment?

A. Yes, sir; and for four or five years as Federal Referee in Bankruptcy.

Q. Then how many years altogether of official life have you had in this county?

A. Oh about around twenty years.

Q. Prior to that time did you live in this county? I know you did for some little time?

A. I came to Lauderdale County in July, 1911, and have lived here continuously since then.

Q. Now, Judge, both as county superintendent and as county attorney, and as county judge, you are required under law to attend the empanelling of the grand jury and answer to the call of the roll of officers, are you not?

A. That is correct.

Q. And you have done that?

A. I have.

Q. Throughout your periods of service covering those three offices?

A. Yes, sir.

Q. County judge, county attorney and superintendent of education?

A. Yes, sir.

Q. I want to ask you if, during that entire perior of time there has been a single negro who has been called

to the box and sought to be qualified, or who has been qualified upon and taken as a member of the grand jury of Lauderdale County?

[fol. 77] A. Not that I know of, Mr. Broadway.

Q. Before you became an official of the county did you with any frequency go to the court rooms during the terms of criminal court of the circuit court?

A. I would say I attended the courts more regularly than the average citizen, because since 1916 I had license to practice and had some business in the courts and was interested in courts.

Q. Now let this question then cover that period as well as your official connection with the county. During all that time have you known of a single member of the negro or colored race serving upon a grand jury in a criminal term of the circuit court of this county?

A. I have not.

Q. Do you know of one being called to the box to be qualified or not qualified for grand jury service in this county?

A. I do not.

Q. Do you know of a single negro being summoned, being listed, drawn, or summoned for grand jury duty, or jury duty generally at any term of criminal court of circuit court of this county during all that period of time?

A. I do not.

Q. Judge, you have run for office several times for an elective office. Let me ask you this question. What is your best judgment as to the number of qualified electors in Lauderdale County, as of say last year, 1945?

A. I would say around between ten and eleven thousand, probably eleven thousand.

[fol. 78] Q. Between ten and eleven thousand, probably eleven thousand?

A. I would say about eleven thousand.

Q. Can you, and will you, for the sake of the record, give the court the benefit of your very best judgment as to the number of negroes in that group?

A. What do you mean, Mr. Broadway? Do you mean there are a number of negro qualified electors?

Q. Yes?

A. It would just be a guess, Mr. Broadway. I have checked the records in connection with qualified electors at different times and have found several negroes registered.

I would have to make a guess but I would imagine there is——

Q. (Interposing:) Well let's see, Judge, Excuse me. As a result of your searching of those records and making inquiry. At least to that extent, a search to that extent, what would you say in your very best judgment was the number of negroes in that body of qualified electorate last year?

A. Broadway, I imagine there is probably less than a hundred qualified. I don't know.

Q. Judge, would you give that as your best judgment in that connection?

A. Yes I said a while ago it would be more or less a guess, Mr. Broadway. I have understood several negroes in recent months have offered to register or have registered, but how many I don't know. I just know there are some qualified.

Q. Well I understood, Judge, you made your search last year. Was I right in that assumption?

[fol. 79] A. No; I should have made this explanation. I have not searched the record to see who was qualified and not qualified since I made the race for county judge. I believe that was in 1942.

Q. At that time what is your judgment as to the number that you know of, of qualified electors of the negro race?

A. I would say a hundred.

Q. In 1942 you would state there was around a hundred?

A. I am stating I am guessing. I don't know.

Q. Well, Judge, you are making that on the basis of your search of the records at that time, aren't you, not a count but having looked at the records?

A. Mr. Broadway, in looking over the lists here and there at various boxes a few of the boxes in the county maybe, I don't imagine that there is over five or six boxes, if that many, outside the City of Meridian where there were negroes registered. In the city you would find the names here and there scattered about through the record indicating they belonged to the negro race, with a little c after their name, and there was very few of them.

Q. And you would think around a hundred, I believe you say, in 1942?

A. I would not think there was over a hundred.

Q. Not over a hundred? Judge, what about in your best judgment as to whether in the meantime that number has increased or decreased or remained the same?

A. Mr. Broadway, I have no way of knowing. It would just be hearsay.

[fol. 80] Q. All right, sir, I don't want you to just give hearsay. Judge, one further question, has Mr. J. T. McDonald and myself asked you any questions prior to you taking the witness-stand?

A. No, sir; I didn't know you were representing the man until this morning, Mr. Broadway.

By Mr. Broadway: I believe that's all. Take the witness.

Cross-examination.

By Mr. Lobrano:

Q. Frankly, Judge, you say that was just a guess based on nothing except more or less hearsay and what you heard about them, and having looked at those registered on the books?

A. It was. Incidentally, Mr. Lobrano, in passing through a great number of names I would find one here and there marked "c" indicating colored. Now I would say this, I would not be able to say then he had paid his poll tax. I would just know he was registered.

Q. And you would say there are fewer than a hundred even registered over a long period of time on the registration books?

A. My best judgment would not be over a hundred.

Q. Now of that number there are about an equal division of men and women in that, are there not? The division is about the same as among the white people?

A. You speaking of registration?

Q. Yes?

A. Well I tell you, I couldn't remember.

Q. But aside from checking it is true it is about the same [fol. 81] division of sex so far as the race is concerned, and no material difference?

A. I don't know about the registration. About the poll tax, I would say about the same number of men and women paid poll tax.

Q. And so far as you know of your own knowledge, you don't know whether there are ten qualified negroes in this county qualified to vote as of this date?

A. Not from my own knowledge.

Q. And you don't know whether there was a single one at the time this grand jury drawn indicted this defendant, met at the February term, 1946, this term? You don't know whether or not at the time the board of supervisors drew those names there was a single qualified negro in this county?

A. I could not swear.

Q. Judge, negroes in this county don't interest themselves in voting and paying poll tax, do they?

A. They have not in the past, Mr. Lobrano.

Q. Therefore, as you say, you just go over the registration or poll tax and there is just a scattering of names in some boxes? You don't find any number? You find a few in there as you go over them?

A. That is my recollection about it.

Redirect examination.

By Mr. Broadway:

Q. Judge, it is true, is it not, that members of the negro race are more and more interesting themselves in registering and paying poll tax, aren't they?

[fol. 82] A. Well, Mr. Broadway, from what you read in the newspapers and gossip has it, I think it is true. I think the younger group of colored folks or negroes are taking more interest than the old ones did.

Q. Since the efforts of Congress to repeal payment of poll tax as a condition requisite to voting, you know or don't you, they are interesting themselves more in registering and qualifying to vote?

A. I don't know what is causing it. I think that is true.

Q. Regardless of the cause you know they are doing it, don't you?

A. That is my judgment about it.

Q. And that has been going on for the past several years, some two or three anyway, hasn't it?

A. I don't know. I am no judge of the activity in this particular county that has taken place in the last few years, Mr. Broadway. As I said, the general sentiment is, and the newspaper reports seem to indicate, that they are generally over the country beginning to want to vote and have a part in politics.

Q. And that is more on the upsurge or increase than otherwise at the present time?

A. I would think so.

By Mr. Lobrano: I want to ask him some questions touching the change of venue.

By Mr. Broadway: That is all right. We will be glad to [fol. 83] accommodate the judge any way we can.

By Mr. Lobrano: Let the record show that by agreement of attorneys this testimony may be considered on the motion they have filed for change of venue.

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[fol. 84] GEORGE BEEMAN called as a witness by the defendant, was sworn, and testified on the motion as follows:

Direct examination.

By Mr. Broadway:

Q. You are Mr. George Beeman?

A. Yes, sir.

Q. Superintendent of Education in this county?

A. Yes, sir.

Q. How long have you been such, please, sir?

A. About ten years.

Q. Prior to that did you hold any official position in the county?

A. No, sir.

Q. Of any importance at all, any official position prior to that?

A. No, sir; I taught in Clarke County just prior to that.

Q. Now, Mr. Beeman, you have been Superintendent of Education about ten years, did you say?

A. Yes, sir.

Q. During that time and as such an official, as we understand it, you were required by the law to attend the empanelling of the grand jury and be present at the beginning of the charge at each term of criminal court of the circuit court of this county?

A. Yes, sir.

Q. You did that, did you?

A. Yes, sir.

Q. I want to ask you whether at any term of court since [fol. 85] you have been County Superintendent of Educa-

tion, and which you attended as such, or at least attended the empanelling of the grand jury, whether there has been any negro to be empanelled on the grand jury in this county?

A. No, sir.

Q. Were there any negroes whose names were called and who took the jury box with a view of being qualified for grand jury service during that period of time?

A. Not to my knowledge. I wasn't there every time that they empanelled them.

Q. Would you undertake to estimate or state the number of times you were not present at the empanelling of the grand jury during that period of time?

A. One time I believe.

Q. Only one time? Then there were not any negroes, I believe you said, called to the jury box, or grand jury box, at any of those times during that ten year period when you attended, and you attended all of them except one; that is true, isn't it?

A. Yes, sir.

Q. Mr. Beeman, do you keep, as Superintendent of Education, a roll or list of the educable colored children in this county?

A. Yes, sir.

Q. Can you tell us as you sit there now the approximate number of educable colored or negro children in this county?

A. About twenty-seven hundred, I believe, outside of Meridian separate school district.

Q. Outside the Meridian separate school district, about [fol. 86] twenty-seven hundred?

A. That is the ones we record.

Q. The educable age is what?

A. It is to twenty-one.

Q. The number of educable white children outside the City of Meridian separate school district in the county is approximately what?

A. Approximately thirty-one hundred.

Q. Then there is only a difference of four hundred in the educable white and colored children in this county outside the Meridian separate school district?

A. Something like that.

Q. Could you give the Judge any very definite idea as to the number of families represented by those twenty-seven hundred educable colored school children?

A. No; I could not; except any more than it seems to me according to the census bureau. It runs about five to the family.

Q. An average of about five to the family?

A. I could not tell you anything about the number of families.

Q. What are the general requirements as to negro school teachers in this county?

A. Well, the general requirement is to secure a teacher's license.

Q. And how much education does that require?

A. Well, it can be as low as ninth grade education with five weeks of summer school training to secure license.

[fol. 87] *A. It is to twenty-one.*

*Q. The number of educable white children outside the City of Meridian separate school district in the county is approximately what?*

*A. Approximately thirty-one hundred.*

*Q. Then there is only a difference of four hundred in the educable white and colored children in this county outside the Meridian separate school district?*

*A. Something like that.*

*Q. Could you give the Judge any very definite idea as to the number of families represented by those twenty-seven hundred educable colored school children?*

*A. No; I could not; except any more than it seems to me according to the census bureau. It runs about five to the family.*

*Q. An average of about five to the family?*

*A. I could not tell you anything about the number of families.*

*Q. What are the general requirements as to negro school teachers in this county?*

*A. Well, the general requirement is to secure a teacher's license.*

*Q. And how much education does that require?*

*A. Well, it can be as low as ninth grade education with five weeks of summer school training to secure license.*

Q. Can you tell us approximately how many colored male school teachers you have in the county?

A. We have five, I believe.

[fol. 88] *Q. Can you tell us approximately how many colored male school teachers you have in the county?*

*A. We have five, I believe.*

Q. Do you recall off hand whether the requirements they met are the minimum or better than the minimum requirements of teachers?

A. Most of them are better than the minimum.

Q. That is better or higher than the ninth or high school education?

A. Yes, sir; two of them are college graduates.

Q. Two are college graduates? Mr. Beeman, as Superintendent of Education do you and have had recently any occasion to check the qualified electors of the county?

A. No, sir.

By Mr. Broadway I believe that is all.

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[fol. 89] Donovan Ready called as a witness by the defendant, was sworn, and testified on the motion as follows:

Direct examination.

By Mr. Broadway:

Q. You are Mr. Donovan Ready?

A. Yes, sir.

Q. Mr. Ready, what business are you engaged in?

A. Certified Public Accountant.

Q. And how long have you been so engaged?

A. I just don't know, some fifteen or twenty years in accounting work. I have been certified about ten years.

Q. Mr. Ready, sometime comparatively recently you made a check of the qualified electors in the county, did you not?

A. Yes, sir.

Q. When was that?

A. I think it was in April '44, spring of '44 is the best of my recollection.

Q. And your check covering their qualification was over what period of time?

A. It was for the years '41 and '42.

Q. You were trying to ascertain if they were qualified electors during that time?

A. Yes.

Q. '41 and '42?

A. That is correct.

Q. And your check was made in April '44?

A. I believe that is corret. I have forgotten. I could [fol. 90] not say positively, but I think it was about that time.

Q. Mr. Ready, how many qualified electros did you ascertain, as a result of your check, there were in Lauderdale County during the years '41 and '42?

A. Mr. Broadway, I have forgotten exactly. But as I recollect there were something better than twelve thousand.

Q. Did that check include both white and colored qualified electors?

A. Yes, sir.

Q. Can you tell us exactly now how many colored qualified electors there were shown by that check?

A. No, sir; I can't tell you exactly because I didn't count them for that particular purpose at the time, but I would assume that there were somewhere around thirty-five or forty, somewhere between there and fifty and sixty. I would say between thirty and sixty qualified colored electors in the county at that time.

Q. Is that your best judgment, Mr. Ready?

A. Yes, sir; that is my best judgment about how many there would be.

Q. Now you say there were that many, from thirty to sixty qualified electors. You mean by that that they were qualified to vote in at least general elections held in this county?

A. They were registered and had paid their poll tax in the period required to be qualified at that time, or were qualified without the necessity of paying poll tax because of age. The largest part of them were preachers, as I recollect, and school teachers, those that were known to me. [fol. 91] Q. Have you any way of approximating the number of under sixty years of age there were of those qualified electors, colored qualified electors?

A. No, sir; I do not, Mr. Broadway. I would not think a great many of them were over sixty. Some were but not a great many. I knew most of them, that is why I knew they were colored. They don't indicate on the record that they were colored, but they were mostly colored preachers, as I say, and colored teachers and they were middle age on the average. There were some probably over sixty, but I wouldn't say a great many of them were.

Q. Could you approximate what percentage of them were preachers and teachers?

A. I would say they were predominantly preachers and teachers. They were the better educated negroes of the county.

Q. Would you say better than half of them?

A. Yes, sir; I would say better than half of them were preachers.

Q. Or teachers?

A. Or teachers. You understand that my estimate of the number of them is purely an estimate. As I say, I did not count them. Just in going through that is my judgment of about how many there were.

By Mr. Broadway: I understand. I believe that is all from this witness.

Cross-examination.

By Mr. Lobrano:

Q. Mr. Ready, you did not check up to see how many of [fol. 92] them were men or how many were women in there either, did you?

A. No, sir; I didn't, Mr. Lobrano.

Q. And the ratio of population of negroes, the sexes, is about the same as with reference to the whites?

A. I would assume so. My recollection is a pretty large number of them were preachers. They would not be women. Not most, but a good part of them are preachers.

Q. And the preachers are exempt from jury service in this county?

A. I think they are, but I am not sure about that. I am not a lawyer.

Q. And teachers also?

A. No; I don't know about the teachers.

Q. Now, Mr. Ready, that was way back in the year—what check was that?

A. It was for the years 1940, the poll tax. February 1st, 1941 and 1942 were the two years I checked on.

Q. Now just how many of that thirty to sixty, in your best judgment, were dead, you don't know either do you, Mr. Ready?

A. I would not think any great number of them were dead, Mr. Lobrano. The reason, as I said, I knew they were

negroes because I knew a great many of them. They did not indicate they were negroes on the books.

Q. You would not say how many were dead?

A. That is correct.

Q. And you could not say how many moved out of the county? You could not say about that?

A. No; I could not say about that.

[fol. 93] Q. At the time this defendant was indicated by the grand jury, you could not now say of your own personal knowledge there was a single qualified elector of the colored race at that time?

A. No; I could not; not at that time.

Re-direct examination.

By Mr. Broadway:

Q. Mr. Ready, may not there have been a good many of these or some of these qualified electors negroes who you did not know, and since the books did not indicate it you would not know whether they were black or white?

A. Could have been possible. Yes, sir; could have possibly been some that I did not know.

By Mr. Broadway That's all.

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[fol. 94] E. C. Gunn called by the defendant, was sworn, and testified on the motion as follows:

Direct examination.

By Mr. Broadway:

Q. Mr. Gunn, you are supervisor from Beat 5 in this county I believe, are you?

A. Yes, sir.

Q. How long have you been such?

A. About six years.

Q. Prior to that did you hold any official position in the county?

A. No, sir.

Q. Can you tell us how many qualified electors there are in your beat?

A. Well roughly I might kind of tell you.

Q. Your best judgment?

A. About seven hundred.

Q. Can you tell us what percentage of those, if any, are colored?

A. There is not any, I don't think.

Q. You don't think there is any?

A. No, sir.

Q. Are there any negroes' names appearing on the registration books from your beat?

A. I think there is a few.

Q. Give us your best judgment as to how many, please, sir?

A. Four or five.

[fol. 95] Q. Four or five? And can you tell us for how long their names have appeared on the registration books?

A. No, sir.

Q. Have they appeared on there for as long as two years or more?

A. Some of them have.

Q. And how many did you say, five or six?

A. Four or five.

Q. Four or five?

A. That is to the best of my judgment, four or five.

Q. The jury box of this county was refilled by the board of supervisors at an adjourned meeting or at a meeting in October of last year, was it not?

A. I would not say for certain that it was October. But I think it was in October. I would not say that it was.

Q. And that was the jury list and the jury box from which the grand and petit juries for the present term of court were made up?

A. Yes, sir.

Q. At that time did these four or five names appear on the registration books?

A. I think so.

Q. Of these colored or negro——

A. (Interposing:) Yes, sir.

Q. I believe you said you could not tell us how long their names had appeared on the registration books?

A. No, sir.

[fol. 96] Q. Can you tell us whether any of the four or five have appeared on the registration books for more than two years or not?

A. I think there is about two has been on there longer than that, Mr. Broadway. I am not sure of that.

Q. Mr. Gunn, during the six years you have been supervisor, in making up your jury list, or list of names for jury service, have you listed any negro?

A. No, sir.

Q. You gentlemen in making up your list, do you use the registration books as a guide?

A. And the poll books; yes, sir.

Q. Since you have been supervisor, you have attended the empanelling of grand juries and were present, at least at the beginning of the judge's charge to the grand jury, haven't you?

A. All but one I have.

Q. All but one?

A. Yes, sir.

Q. And there are two criminal terms of the circuit court held in this county each year, are there not?

A. Yes, sir.

Q. At those terms of court which you have attended, has there been a single negro called to the jury box with a view of being qualified for grand jury service, or has there a single negro served upon the grand jury?

A. Not that I know about.

Q. Do you or not know, as a matter of fact, Mr. Gunn, that there has not been any during that time?

[fol. 97] A. I don't think there has, Mr. Broadway.

Q. If there had been would or not you know about it?

A. I would think I would.

Q. There was not any negro listed in the jury list that was made up in October of last year, was there?

A. You mean whether there was any put in the box or not?

Q. Yes?

A. There was not in my beat. That is all I know about.

Q. You don't know about the others?

A. I don't know about those.

By Mr. Broadway: That's all.

Cross-examination.

By Mr. Lobrano:

Q. Mr. Gunn, do you know about when the last time the new registration was required in this county?

A. Jack, just off hand I don't know just when it was. It has been some several years.

Q. Long time before you ran for office, wasn't it?

A. Yes, sir; I think so.

Q. There has been no new registration for considerable time before you ran for office, has there?

A. There has not.

Q. Now during all that time, as I understand it, Mr. Gunn, there have been only four or five negroes seen fit to even register up there?

A. That is the way I have seen it.

[fol. 98] Q. And so far as those who have paid their poll tax and otherwise qualified as electors in this county, you say there is none in your beat so far as you know of?

A. There is none.

Q. That is correct, is it?

A. Yes, sir.

Q. And it is true of that four or five you don't know how many have moved out of the beat or who have died?

A. No, sir.

Q. You just don't know about that?

A. No, sir.

Q. And the truth of it is out there, Mr. Gunn, the negroes have very little interest in voting or taking part in political affairs. That is correct, isn't it?

A. That is correct.

Q. Their minds are more or less occupied with other things, aren't they?

A. That is correct.

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[fol. 99] L. D. WALKER, called as a witness by the defendant, was sworn, and testified on the motion as follows:

Direct examination.

By Mr. Broadway:

Q. You are supervisor, one of the supervisors of this county?

A. Yes.

Q. And your beat is Four, I believe?

A. Yes.

Q. How long have you been supervisor, Mr. Walker?

A. Sixteen, seventeen years.

Q. Is that consecutively?

A. Yes.

Q. Did you hold office prior to that time?

A. No.

Q. I mean county office?

A. No.

Q. Mr. Walker, what is the approximate number of qualified electors in your district?

A. Around seven hundred.

Q. Are there any of those colored?

A. No.

Q. There are no colored qualified electors in your district?

A. No.

Q. Are there now any negroes' names upon the registration books from your district?

A. No.

Q. None upon the registration books?

A. No.

[fol. 100] Q. Has there been—have there been any negro qualified electors in your beat since you have been supervisor?

A. Not that I recall.

Q. Since you have been supervisor have there been any negroes' names appearing on the registration books covering your district?

A. Don't remember any.

Q. Don't remember? Do you mean there may have been and you just don't recall it?

A. Well I just don't remember. I don't recall it.

Q. At any period during the time you have been supervisor there has not been listed by you as a supervisor the name of any negro for jury service from that beat, has there?

A. No.

Q. Mr. Walker, the law requires that members of the board of supervisors, as well as other county officials, attend the circuit court at each criminal term, and answer to the roll call, be present at the start at least of the judge's charge to the grand jury. You have done that since you have been supervisor, have you not?

A. Yes.

Q. Could you tell us whether or not during that period of time you have missed any of those called and if so, how many?

A. Haven't missed it.

Q. And there are two terms of criminal court held a year?

A. Yes.

Q. During that time have you ever seen a negro called to [fol. 101] the jury box, to the grand jury box, to be asked a question, with a view of being asked questions to qualify for grand jury service or that has served upon the grand jury?

A. No.

Q. Mr. Walker, do you know aside from your experience and knowledge acquired about the grand jury at any time in the history of this county, when a negro has served upon the grand jury?

A. No; I don't know it.

Q. What is the population of your district, both white and colored?

A. I don't know at this time.

Q. Well can you tell us approximately what percentage of them are colored?

A. No.

Q. The negroes in your beat are considerably less than the number of whites?

A. Yes.

Q. Could you tell the court approximately how many negroes there are in your district?

A. No; I have no idea.

Q. You members of the board, in making up your jury lists, and getting ready to fill the jury box, do you use the registration books as your guide?

A. Registration and poll books, yes.

Q. Those two together? And you don't stop simply at the registration books? You go further and look at the poll books, do you? Do you generally find that a person whose name appears upon the poll books has voted at some previous election?

[fol. 102] A. Yes.

Q. Do you check in the sheriff's office with reference to whether the poll tax is paid or not?

A. Yes.

Q. And of course if you find that a person whom you are

contemplating listing has not paid his poll tax, you don't list him?

A. No.

Q. And that is your general practice that prevails among you members of the board?

A. Yes.

By Mr. Broadway: I believe that is all.

Cross-examination.

By Mr. Lobrano:

Q. Mr. Walker, do you recall when the last registration was required in this county, when the last new registration rather was required?

A. No.

Q. It has been some eight or ten—it was about—do you recall whether it was about the year 1933 or 1934?

A. '32 or '33.

Q. Since then there has been no new registration required?

A. No.

Q. Now, Mr. Walker, there are some negroes that live out there in the beat where you do?

A. Yes.

Q. But most of them don't interest themselves in voting? [fol. 103] They have other things and they take very little interest in registering and paying their poll tax; isn't that a fact?

A. Yes.

Q. And if one should register—as you say you don't recall any of them having registered in your beat?

A. No.

Q. And you say, I believe, you have been supervisor out there for about how many years?

A. Sixteen or seventeen years.

Q. And you don't now recall having looked over those registration lists, when you got ready to fill the boxes, of their being a single negro who is registered out there?

A. No.

Q. And of course if he did not register, you don't know of any who have paid poll tax out there, do you? Now, Mr. Walker, when you are getting ready to fill the jury box, first you go to the registration books and then to the poll

tax to ascertain, or go to the sheriff's office to ascertain whether or not they have paid their poll tax, and then do you follow the law with reference to securing men who are of good intelligence and fair judgment?

A. Yes.

Q. There are several—good many, I don't know how many from your beat, but a good many anyway never serve on juries, because when a supervisor checks them over he finds some of them don't come up to the qualifications that the statute requires? That is correct, is it not?

A. Yes.

[fol. 104] Q. And I believe you say that you don't know whether in the grand jury that indicted this man, whether there were any negroes drawn for it or not, but there were not in your beat?

A. (No response).

Re-direct examination.

By Mr. Broadway:

Q. Mr. Walker, the jury list from which the jury box was filled, or with which the jury box is filled, and from which the grand or petit juries for the present term of court were made up and selected, was made up last October, was it not?

A. Yes.

Q. At a regular or adjourned meeting?

A. Adjourned meeting.

Q. And you do know, do you not, that there were no negroes on the grand jury at the present term of court?

A. That's right; no negroes.

Q. I think I got it clear but I want to ask another question or two about it. You gentlemen first go to the registration books when you go to make up your jury list?

A. Yes.

Q. But you don't stop there? If you find names on there so far as that book is concerned are qualified, you don't list them then? You go, in addition to that, to the poll book and then ascertain if they are properly listed there?

A. Yes.

Q. And whether or not they have voted at any previous election?

[fol. 105] A. Yes.

Q. But you don't stop there either? If you find them regular so far as those two books are concerned, you will go to the sheriff's office and ascertain if their poll tax has been paid on or before the first of February for the two years previous?

A. Yes.

Q. In other words, those three steps together are taken before you list anybody on the jury list?

A. Yes.

Q. And even though he might be listed on the first two books, unless he is listed in the sheriff's office as having paid his poll tax, you don't put him on the list? That correct?

A. Yes.

Recross-examination.

By Mr. Lobrano:

Q. And sometimes you go a little step further, since we are going into it? You go back to the clerk's office to find out whether a man served in the last two years and strike him off of there?

A. Yes.

Q. Then you use your sound discretion, check over to see if those man meet the qualification that they have good intelligence, fair character and sound judgment, do you not?

A. Yes.

Q. And that is the steps in which you get them in the box?

A. Yes.

Redirect examination.

By Mr. Broadway:

[fol. 106] Q. Mr. Walker, ordinarily unless you know that an elector is a bad man or has a bad reputation, and he appears qualified on the list, without any inquiry as to whether he is a good man or bad man you list him, don't you?

A. We try to be sure.

Q. What I mean by that, to re-state it, re-hash it a little, assuming you are going over your records here now to make up your jury. You run across the name of a man whom you find qualified insofar as the record is concerned. Unless you know of your own knowledge or have heard that this is a

man or enjoys—has a bad reputation, or is engaged in some illicit operation of some kind, you list him as a matter of course, don't you?

A. Yes.

Q. Sir?

A. Yes.

Q. In other words the requirements of good intelligence, sound judgment, and fair character, while you don't ignore, you don't go out of your way to inquire if a man has got those qualifications?

A. Yes; sometime- we do.

Q. But that is where you have some question in your mind at the time about it?

A. Yes.

Q. Or have heard something touching his character or qualifications?

A. Yes.

Q. Of course, if you found a man whom you were satisfied [fol. 107] did not have good intelligence, or did not have sound judgment, or whose character was questionable, and you knew that or had recently heard it, you would at least hesitate about listing that man as a juror, wouldn't you?

A. Yes.

Q. But if you have not heard those things and he is otherwise qualified, I mean with reference as far as the books are concerned, you just almost automatically list him without anything further, don't you?

A. Yes.

By Mr. Broadway: That is all. Now, Jack, the other matter if you please.

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[fol. 108] O. L. KING, called as a witness by the defendant, was sworn, and testified on the motion as follows:

Direct examination.

By Mr. Broadway:

Q. Mr. King, you are supervisor from Beat Three of this County?

A. Yes, sir.

Q. How long have you been such?

A. Seven years.

Q. Seven?

A. Seven.

Q. Mr. King, what is the population of your beat?

A. I don't know what the population is.

Q. How many, approximately how many qualified electors have you got in your beat?

A. About twelve hundred.

Q. Are any of those members of the negro or colored race?

A. No.

Q. Do you have in your beat the names of any negroes appearing upon the registration books?

A. One that I know of.

Q. And can you tell me whether his name has appeared there for the past seven years?

A. No; I don't know.

Q. You don't know how long it has been on there? Can you tell me whether or not his name has been there for the past four years?

A. I am not certain about that.

[fol. 109] Q. I understand the poll books, registration books, election books were purged in 1942. Do you so understand?

A. Yes.

Q. Then his name would have been there during that time?

A. I think so.

Q. Now since you have been supervisor that has been the only negro's name has appeared on your registration books?

A. That is all I know of.

Q. Of course that is what I mean, all you know about. That is a negro man, isn't it?

A. Yes.

Q. Do you know him yourself?

A. Yes.

Q. Mr. King, since you have been supervisor and over the entire period, has there been any negro listed for jury service from your beat?

A. No.

Q. There has not been a one listed for jury service?

A. Not that I know of, no.

Q. Mr. King, the law requires that supervisors attend the circuit court at each criminal term to answer to the call

of the roll or list of county and district officers. You have done that since you have been supervisor, have you?

A. Yes.

Q. Have you missed any of those meetings at all?

A. I don't understand.

Q. You understood the question about attending court. [fol. 110] Did you, during that time you have been supervisor, have you missed any of the roll calls at the terms of circuit court?

A. No, sir.

Q. You meet them all?

A. Yes, sir.

Q. And you were there at the call of the roll and at least at some of the judge's charge to the grand jury?

A. Yes.

Q. During that period of time has there been a single negro who has been called into the jury box with a view of being qualified for grand jury service, or has there been a single negro to serve upon the grand jury?

A. Not that I know of, no.

Q. Well you saw the empanelling of the grand jury at each of those terms of court, then you know whether or not negroes were called on to serve on the grand jury. There were none, were there?

A. I don't think so, I don't know for sure.

Q. You don't know for sure?

A. I don't remember seeing any of their—no.

Q. You don't remember seeing any there. Then so far as you know and your knowledge and observation has extended, at least over that period of seven years, there has been no negro to serve or be called for service upon the grand jury in this county, has there?

A. I don't remember of any, no.

Q. Mr. King, don't you know, as a matter of fact, there has not been any called for grand jury service, or served [fol. 111] upon the grand jury during that period of time?

A. Well I don't remember seeing any of there, no.

Q. And you were present at each term of court when the grand jury was empanelled?

A. That's right.

Q. Your jury list, from which the grand and petit juries were selected for this term of court, was made up last October, was it not?

A. I think it was October.

Q. Do you recall whether it was an adjourned or regular meeting?

A. No; I don't.

Q. You gentlemen, in making up your lists, go first to the registration books, don't you?

A. Yes.

Q. Then you go next to what book?

A. Poll Book.

Q. And do you go any further? Do you go to any other record or book?

A. We go to the Chancery Clerk and get the ones that has served in the last two years—I mean the Circuit Clerk.

Q. Yes, sir; I understand that. But I mean with reference to the record books particularly required to be checked by law, you go first to the registration books, then you go to the poll book? Now if a man is on the poll book——

A. (Interposing:) We check that off in the sheriff's office to see if they are qualified.

[fol. 112] Q. All right, I will get to that in a while. If a man is on the poll book, not been there long enough to vote, do you list that?

A. The poll book?

Q. Yes?

A. Not if he has served within the last two years or the poll tax has not been paid.

Q. I am assuming has not served in the past two years. If listed on the registration and poll book, but not listed as having voted, do you list him whether he has voted or not?

A. Yes.

Q. Then you go to the sheriff's office to check if he has paid poll tax, and even though he is already qualified so far as those two books are concerned, if he has not paid poll tax within the last two years you don't list him?

A. Yes.

Q. Then you use those two books and that method as the records you search making up your jury lists, and even though a man has not served in two years, even though on the registration and poll books if he has not paid his tax in the last two years, you don't list him?

A. No.

By Mr. Broadway: All right, that's all.

Cross-examination.

By Mr. Lobrano:

Q. I believe you told him that there was one negro registered out there?

[fol. 113] A. That's right.

Q. Do you know whether he is qualified to vote or not?

A. Well I don't know about that.

Q. You don't know whether he is or not, and you say you know him?

A. Yes, sir.

Q. The negroes out there are like they are in most parts of the county, Mr. King, they don't interest themselves very much in taking part in any election or voting or registering? They have other things that keep their minds pretty well occupied, do they not?

A. That's right. This one is a doctor.

Q. And, Mr. King, I did not catch that last answer?

By the Court: He said this one is a doctor.

By Mr. Lobrano:

A. And is that the one that is dead now, the old Dr. Macon out there?

A. No, this is Spears.

Q. Mr. King, do you know when the last registration was ordered in this county? Was it not about the year 1933?

A. 1933, that is right.

Q. Of course a large number of those people whose names appear on the registration books are now dead, moved off, changed voting precincts and other things? Is that true?

A. Yes, sir.

Q. And that has been—you know whether it was the early of the last part of 1933 the registration was ordered? Which was it? You remember whether it was the first or last part [fol. 114] of 1933?

A. I don't remember whether the first or last part.

Re-direct examination.

By Mr. Broadway:

Q. Is this Spears under sixty years of age?

A. Yes, I think so. Yes he is under sixty.

Q. Do you know about what his age is?

A. No, only to guess at it. My guess he must be around fifty.

Re-cross-examination.

By Mr. Lobrano:

Q. Doctors are exempt from jury service in this state anyway, are they not, Mr. King?

A. Yes; we don't call them, the doctors.

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[fol. 115] WILLIAM WRIGHT, called by the defendant, was sworn, and testified as follows:

Direct examination.

By Mr. Broadway:

Q. You are Mr. William Wright, Supervisor of Beat One of this County?

A. Yes, sir.

Q. How long have you held office?

A. Since May, I believe, May 9th of the past year.

Q. Of 1945?

A. Yes.

Q. Mr. Wright, how many times have you made up a jury list since you have been supervisor of your district?

A. Three, I believe.

Q. And when was the last one made?

A. The last one was just Wednesday of this week.

Q. Wednesday of this week prior—prior to that when was the next one?

A. I believe it was last October.

Q. That was at an adjourned meeting of the Board, was it not?

A. Yes, sir.

Q. Then it was from the one made up in October last year that the grand and petit juries for this term of court were selected?

A. That is correct.

Q. Mr. Wright, in listing the names of persons for jury service in October of last year, did you as Supervisor in Beat One, list the name of any negro?

[fol. 116] A. I am not sure about that term of court, but I have listed two or three negroes.

Q. Well now let's see, you have listed since you have been supervisor two or three negroes?

A. Yes, sir.

Q. Could you give us their names?

A. No, sir, I could not, because when I draw a jury I draw four or five hundred men and I could not remember.

Q. You mean you draw four or five hundred names?

A. Anywhere from three hundred to five hundred.

Q. You don't put that many names in the final official list in the box?

A. Yes, sir.

Q. Mr. Wright, now recently when you made up a new jury list, there were some names in the jury box from district one, were there not?

A. Yes, sir.

Q. And that was emptied, they were taken out of the box?

A. That's right.

Q. You don't know whether any of those names were colored people or not, do you?

A. No, I don't.

Q. You did not check them over with a view of determining it?

A. No, I did not.

Q. But now, except for those names still in the box, the other names that were put there in October have already been exhausted, already been used up for service, or excused, or something of that kind happened?

[fol. 117] A. There were some left in the box.

Q. I understand; but except those that were left, they had been used up either in getting juries, or in the process of getting juries, or they had been placed on the jury and excused, or something of that kind had happened?

A. That is correct.

Q. Now then you know there was not any negro on the grand jury at the present term of court, do you?

A. I don't think there was.

Q. You don't think there was?

A. No.

Q. You, as supervisor, attended the call at criminal court and the charging of the grand jury?

A. There were no negroes on it.

Q. Could you tell the court whether or not at the October adjourned term in 1945 there were any negroes listed at all?

A. I could not.

Q. Do you know whether or not you listed any at that time or not?

A. I am not sure. That can be determined from the minutes of the board, though.

Q. Would the minutes show whether they were colored or white?

A. No, they would not.

Q. How many negro qualified electors are there in your district, Mr. Wright?

A. I don't have any idea.

[fol. 118] Q. Well if you don't have any idea, you can't give us any judgment about it?

A. No, sir.

Q. Have you any judgment about it?

A. Well it would just be a guess.

Q. Well we don't want just a pure guess. If you can't make it better than that, we will leave it alone. How many times did you say you had made up jury lists since you have been supervisor?

A. Three times, I believe.

Q. And when was it you listed these two or three negroes you referred to?

A. I could not tell you.

Q. Mr. Wright, you members of the board, in the process of making up your lists, go first to the registration books, do you not?

A. Yes, sir.

Q. Can you tell us the names of how many negroes appear on the registration books in your district?

A. Could not.

Q. There are some of them, are there not?

A. Yes, sir.

Q. And you would not give us your best judgment as to how many were contained on those books?

A. No, as I say, it would be a guess on my part.

Q. All right, sir, when you go to the registration books, you next go to the poll books?

A. That is correct.

[fol. 119] Q. And if the name of a person appears on there but it does not appear he has previously voted in any election, do you list it?

A. Yes, I do.

Q. Now you don't stop with those two books, do you?

A. No.

Q. What other books or records do you go to then?

A. I go to another record which Mr. Brame has in his office that shows every qualified voter in the county, supposed to, and it shows the tax receipt numbers on it.

Q. Shows whether or not his poll tax is paid?

A. And whether or not the man is over age or not.

Q. And whether or not paid his poll tax?

A. That is correct.

Q. With reference to those first two books, registration and poll, if you find a man qualified so far as those two books are concerned and yet find in the sheriff's office he has not paid his poll tax, you don't list him, do you?

A. That is correct.

Q. Is there any other record or book you go to?

A. That is all.

Q. Mr. Wright, do you know at any time either before or since you have been supervisor of any term of court at which a negro sat on the grand jury in this county?

A. I do not.

Q. And how long, in addition to your service as a supervisor, have you been paying any attention at all to the courts with reference to that matter?

[fol. 120] A. Probably fifteen years.

Q. Then for the past fifteen years you do not know of a single instance wherein a negro has served on the grand jury in this county?

A. I do not.

By Mr. Broadway: That is all.

Cross-examination.

By Mr. Lobrano:

Q. Fact of the business, Mr. Wright, they don't interest themselves very much in taking part in elections? They have got other things that keep them pretty well occupied, and they don't interest themselves in registering, paying poll tax and trying to vote, do they?

A. They don't seem to, no.

Q. Well you see few of them come up to register, to pay poll tax?

A. Not many of them do that, no.

Q. Do you know how many paid poll tax?

A. I don't know.

Q. Of course it takes two poll tax receipts prior to the year of the election held for them to vote?

A. Correct.

Q. So far as you know, as you frankly state it would be a guess, as to whether one, two, or few, or many?

A. It would be a guess on my part.

Q. Now after you have gone through this, and you say you [fol. 121] go to the registration books and secure their names, and then go to the poll tax books and see if they are qualified, and go to the sheriff's office to see if they have paid poll tax, then you do go down to see whether they have served in the last two years?

A. That is correct. I had forgotten that.

Q. And then do you not use your own sound discretion as to whether these men, the basis of their qualification, that is whether they have good intelligence and fair character and good judgment?

A. Yes, sir; I do.

Q. And then if they meet that, you put them in there?

A. Correct.

Q. Now in the way you have done thus far, you have more or less gone down through alphabetical order?

A. That is the way I select them.

Q. You have more or less taken the registration books, the poll books in alphabetical order, and from that you get those qualified, and use your discretion of those who have good judgment, and from that put them in the jury box?

A. That is correct.

Q. I believe you have done that three times since May of last year?

A. I think it is three times.

By Mr. Lobrano: That is all on that question.

Re-direct examination.

By Mr. Broadway:

Q. Mr. Wright, at least there are sufficient, or have been [fol. 122] since you have been supervisor, sufficient colored names on those records and those books whose qualifications were such that you selected two or three of them being placed on the jury list?

A. I selected two or three.

Q. And they of course met every qualification in your judgment?

A. As far as I could find out.

Q. That is to say they were qualified electors, they were registered names on the poll books, had not served in two years, and were of good judgment and fair character?

A. As far as I know.

Q. You were satisfied they were such?

A. As far as I know.

Q. And you would not have listed them unless you were satisfied they met those requirements?

A. That is correct.

Q. And, as you say, you just select them at random and run down the list?

A. I don't select them at random. I select them alphabetically.

Q. All right, alphabetically, and there were sufficient of them on those books and records showing as being qualified that going about it in that manner you have selected some two or three since you have been supervisor, for the short time you have been supervisor?

A. Yes, sir.

Q. And prior to that and for a period of fifteen years, [fol. 123] including the period of time you have served, you don't know of a single instance of a negro serving on the grand jury in this county?

A. I do not.

Q. Mr. Wright, can you be more positive about that and say that on the occasions you observed it there have been no negroes on the grand jury?

A. I have not observed any negroes on the grand jury.

Q. Mr. Wright, these records that you have mentioned that you examined in making up your jury lists do not show any other race or races other than white and colored, do they?

A. I don't believe they do.

Q. In other words we may have, there may be on those books a naturalized citizen who came here from a foreign country and he has got to be listed as either white or colored?

A. That is correct.

Q. There is no other distinction or way of classifying them so far as those books are concerned?

A. I don't know of any other distinction.

Q. And that colored on those books, as I understand it, does not refer to anybody except the negro race, does it?

A. As far as I know.

By Mr. Broadway: I believe that's all.

By Mr. Lobrano: Let the record show that the testimony now about to be offered is on the question of a motion that has been filed for a change of venue in this case.

[fol. 124] By Mr. Broadway: Let me ask this question before:

Q. Mr. Wright, before you were called to the witness stand, were you asked any questions about the matters about which you have been interrogated or even contacted for that purpose by either Mr. McDonald or myself?

A. No; I was not asked any questions.

Q. We have not interviewed you in advance with reference to what your answers would be before we put you on the witness stand?

By Mr. Broadway: That is all. Now go ahead.

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[fol. 125] FRANK KENNEDY called as a witness by the defendant, was sworn, and testified on the motion as follows:

Direct examination.

By Mr. Broadway:

Q. You are Mr. Frank Kennedy?

A. Yes, sir.

Q. Mr. Kennedy, what business are you engaged in please, sir?

A. Service station business.

Q. Have you formerly held office in this county?

A. Yes.

Q. And what office, please sir?

A. Member of the board of supervisors.

Q. And for how long a period of time?

A. Four years.

Q. And what years did it cover?

A. '28 to '32.

Q. '28 to '32?

A. Yes, sir.

Q. Had you previously held, or since then held any office other than in the county?

A. No.

Q. That is the only office you have held?

A. City office.

Q. Mr. Kennedy, during that four years of service as supervisor from District One, among other duties you had to perform was the making up of jury lists for the jury box, for the purpose of securing jurors for the trial of matters in the circuit court and chancery court? That [fol. 126] is true, isn't it?

A. That is true.

Q. You did perform that duty while you were a member of the board?

A. Yes, sir.

Q. Before your coming here to the witness stand has Mr. McDonald here or myself interviewed you and asked you any questions touching this matter?

A. No, sir.

Q. During that four years of service in making up your jury lists of names to go in the jury box, did you at any time list the name of a negro for that purpose?

A. No, sir.

Q. Can you now tell us whether during that period of time there were the names of any negroes upon the registration books of this county in your district?

A. Yes; I think it was probably one or two.

Q. That is your best judgment as to the number?

A. Yes; I don't remember how many.

Q. So far as you know that one or that two were in every respect qualified for jury service, were they?

A. I did not think they were.

Q. And why not, please, sir?

A. I don't think they were qualified.

Q. In what respect did you think they were not qualified?

A. Well on account of the age and ignorance of the negroes. One was an old Confederate negro down here at Vimville, old Isaac.

[fol. 127] Q. Better than sixty years of age?

A. Oh yes, sir; he was seventy-five.

Q. And what about the other one?

A. He was here in town.

Q. What was the reason you regarded him as not qualified?

A. He was sixty-five, himself.

Q. And so far as you can now recall, his being over the age of sixty years was the only thing that disqualified him?

A. No, no; I thought that he would not be qualified on account of his education. He was just a plumber.

Q. Account of his education?

A. Yes, sir.

Q. A plumber by trade?

A. Yes.

Q. Mr. Kennedy, over what period of time have you been observing the carrying on of your court and particularly your circuit court, criminal court?

A. I did not get that.

Q. Over what period of time have you been paying attention to or observing the carrying on of your criminal circuit courts in this county?

A. You mean while I was in office?

Q. Or even before or after you were in office?

A. With regard to putting the jury, negroes on the jury lists?

Q. Yes?

A. Well I don't know. I have never—I don't think I [fol. 128] have ever seen a negro juror.

Q. You have never known in all your experience, either while you were supervisor or before or after that time, of a negro being placed upon the grand jury, have you?

A. No, sir; none that I know of.

Q. Those two negroes whom you referred to, were they qualified electors, qualified to vote in elections in this county?

A. Yes.

Q. In other words, their names appeared on the poll books in addition then to appearing on the registration books?

A. Yes, yes; I think so.

Q. And you say that is the only two names that appeared on the registration books?

A. I don't know. I think there might have been others but I don't know of any others.

Q. You think there might have been others on the registration?

A. Yes; I don't know.

Q. And you don't know how many?

A. No, no; I don't.

Q. Did you gentlemen when you were supervisors, did you members of the board when you were a member of it use the registration books as your guide chiefly?

A. Oh, you go by your registration books, yes, your poll books.

Q. Well the registration and poll books are two different and separate sets of books. Did you go by both of those?

A. No, you don't go by the registration. You go by the poll books. That gives you the district they may live [fol. 129] in. Maybe Vimville, Bonita or Marion.

Q. Well they are registered from separate precincts and districts, too, aren't they?

A. Yes.

Q. Then you went to both the registration and poll books?

A. The poll book is the true registration. It is just like it is on the registration. It is just transferred from the registration.

Q. In other words, has to be on the registration before they can be on the poll book?

A. Yes.

Q. Then you went to the poll book?

A. Yes.

Q. And what other books did you go to in making up the jury lists?

A. That was all.

Q. Mr. Kennedy, at the time you were supervisor could you tell us what was the approximate population of your district?

A. No; it included Meridian. At that time we had around thirty-eight thousand I imagine.

Q. That in the whole district or just separate?

A. (Interposing): No; probably a thousand on the outside.

Q. About thirty-eight or thirty-nine thousand?

A. Yes, close to forty thousand probably I imagine.

Q. And that included colored as well as white?

A. Yes.

Q. Can you tell the court or give him the benefit of your [fol. 130] best judgment as to what part of that population was colored?

A. No; I imagine it would be fifty fifty.

Q. Be about fifty fifty?

A. I imagine so in this district.

Q. During that time you were well acquainted throughout the district? You knew a lot of people in your district?

A. Yes, yes.

Q. And you could therefore form a pretty clear idea of what number of people there were in the district, both white and colored?

A. Yes.

By Mr. Broadway I believe that's all.

Cross-examination.

By Mr. Lobrano:

Q. So as far back as '28 and '32 your recollection is there were just two negroes in Beat One that were qualified electors?

A. District One.

Q. And so even back there they were not interested in voting? They had their minds more or less on other things in the county, and had other activities and they did not take enough interest to pay their poll tax and become qualified to vote?

A. Yes.

Q. The fact of the business some over sixty did not come to town enough to register, take enough interest in the political affairs of the county to come to town and sign the registration books?

A. I think that is so.

[fol. 131] Q. Those over sixty that is all they would have had to have done, come to town, put their names on the registration books to become qualified?

A. I think so.

Q. You say back in '28 to '32, to your knowledge there were only two people in your Beat interested enough to do that?

A. All that I could call of the names. I don't know how many might have been registered.

Q. But that is all you know of qualified to vote, one old negro seventy-five, and the other you did not think had intelligence enough to sit on the jury and you did not put him in there?

A. (No response.)

[fol. 132] By Mr. Lobrano: I want to recall the sheriff for one other question please.

W. Y. BRAME recalled for further

Cross-examination

By Mr. Lobrano:

Q. Mr. Brame, do you know when the registration books, when the registration for this county was last ordered?
A. '33.
Q. The year '33?
A. Yes, sir.
Q. And there has been no new registration since that time?
A. No, sir.

By Mr. Lobrano: That's all.

Cross-examination.

By Mr. McDonald:

Q. When did they last overwork those registration books?
A. How is that now?
Q. When did they last go over those registration books and see who was qualified at that time?
A. Now you have reference to the election commission?
Q. Purged them? When did they last purge them?
A. It was in the summer of 1945, I think, Mr. Mac.
Q. Thank you. You are quite familiar with the population in Lauderdale County?
A. Reasonably so, yes, sir.
[fol. 133] Q. In Beat One approximately what is the proportion of colored and white population as of today, your estimate?
A. Well I imagine it would be around sixty-five to thirty-five percentage.

By Mr. McDonald: Thank you.

Redirect examination.

By Mr. Lobrano:

Q. You mean there would be thirty-five percent negro?
A. Thirty-five negroes and about sixty-five whites.

By Mr. Lobrano: Thank you.

(Witness excused.)

[fol. 134] IN CIRCUIT COURT OF LAUDERDALE COUNTY

**Statement of Evidence and Proceedings**

A. B. RUFFIN, called as a witness on behalf of the State, was sworn and testified as follows: (Portions of Mr. Ruffin's testimony as requested in praecipe:)

Q. Now I want to ask you now, did this defendant here point out to you up there in the woods in the direction those tracks led the money, this coat, this hat, and the other things [fol. 135] wrapped up and hid in these woods?

By Mr. Broadway: Just a moment.

A. He did.

By Mr. Broadway: We object and would like to state our objections in the absence of the jury.

(At this point the jury retire from the hearing of the Court, and the following proceedings were had in the absence of and out of the presence of the jury:)

By Mr. Broadway: The defendant now objects to the introduction, now objects to the question and to the introduction of these articles mentioned in the question, and to evidence or testimony of the fact that the defendant pointed them out and their location to the officers, for the reason that it will be contended and is contended by the defendant that he was coerced and forced into his action in pointing them out and to all of his conduct in regard thereto; that to admit these articles would be a deprivation of the defendant's constitutional right not to be forced to give evidence against himself, as provided for in Section 26 in the Constitution of Mississippi, and as guaranteed to him by the law of the land; and if the question is to be answered at this time or the articles offered at this time, it should be done only after a full and complete preliminary examination as to their admissibility, in the light of the defendant's contention and only after the finding by the Court after such hearing that his rights in regard thereto were not violated.

Further, that to admit these articles or permit this ques- [fol. 136] tion to be answered, either or both, would be and is a violation and in violation of the due process clause of the 14th Amendment of the Federal Constitution.

Accordingly, the defendant moves the Court to conduct in the absence of the jury, the jury being now out, such preliminary inquiry and examination as is above indicated.

By the Court: What says the State?

By Mr. Lobrano: Judge, it is five minutes to twelve? Suppose we set it over to 1:15 or 1:00 o'clock, or sometime after dinner?

By the Court: All right, gentelemen, I will recess until 1:30.

Adjournment here taken until 1:30 P. M.

Pursuant to the adjournment heretofore noted, Court met at 1:30 P. M., and the following proceedings were had and done in the absence of the jury:

A. B. RUFFIN resumes the stand for further

Direct examination:

By Mr. Lobrano: Let the record show this is taken outside the presence of the jury. I believe, Judge, you want me to go into the question of whether the confession I propose to offer by this witness and others, you want me to go into it to see if it meets the requirements?

By the Court: Yes, that was the stage we reached before noon.

[fol. 137] Q. Mr. Ruffin, as deputy sheriff, you testified before noon you made certain examinations at the scene. After the defendant was arrested, state whether or not you took him out there and was his feet placed inside the tracks that were out there that left off from that place? Was he carried out there in your presence?

A. No, sir; he wasn't.

Q. All right, somebody else? Were those shoes carried out there and placed in those tracks?

A. Yes, sir; carried the shoes out.

Q. Did you do that?

A. Yes, sir.

Q. How did they compare with reference to whether they fit in those tracks?

A. Perfect.

Q. Then after the defendant was arrested on a charge of murder, did after that time you talk to the defendant?

A. Yes, sir.

Q. What time of day or nigh- or what time was it he was arrested, if you remember, Mr. Ruffin?

A. He was arrested around 12:30 or 1:00 o'clock.

Q. Were you and I both and some other deputies that day busy in court trying another murder case at that time?

A. Yes, sir; we were trying the Wilson case that day.

Q. Then after court adjourned that afternoon, some four or five, or six o'clock, did or not you go up to talk to the defendant?

A. Yes, sir; I did.

Q. In the presence of whom did you talk to him, Mr. Ruffin?

A. Talked to him in the presence of Martin Gunn, Rus- [fol. 138] sell Danner, Mike Nichols, Levi Gray, Max Brunson, Fred Elvidge.

Q. Now after you talked to him, Mr. Ruffin, and after having talked to him, did he tell you where the hammer that he had clubbed this man out there with——

A. (Interposing:) He first told us he killed him with a bottle.

Q. Well, he first told you he wasn't even there, didn't he?

A. Yes, sir.

Q. Then he told you that the bottle he hit him with broke and he jabbed him to death with it?

A. That is what he first told us.

Q. Then later on did he tell you he killed him?

A. He said he worked on him with a bottle, then later reached under the counter, got the hammer, and finished him with it.

Q. Did he later identify this hammer, after shown to him, as the hammer he clubbed him with?

A. Yes, sir; he told me he killed him with that hammer.

Q. After that time did he take you out and show you where he had hid any property that was missing out there?

A. Yes, sir; he carried us out on the mountain. In a tree top we found the big overcoat there, Mr. Meador's hat, the blue hat that is identified as Mr. Meador's hat, and sweat shirt and top coat of his that had some blood on it.

Q. All right, sir, he identified—which one of these hats did he take you to?

A. The blue hat.

Q. His hat?

A. This is Mr. Meador's hat that he said he wore off leaving in a hurry, grabbed it up, wore it off.

[fol. 139] Q. Did he tell you he took this hat by mistake, thought it was his own hat?

A. Yes, sir.

Q. And did he admit this light gray hat was his hat that he left behind?

A. Yes, sir.

By Mr. Broadway: The jury is out, but don't lead him.

By Mr. Lobrano: I think I have a right. I am going to ask the Court to permit me to lead him.

By the Court: There has been no objection. I will rule when one is made.

By Mr. Broadway: I object to him leading this witness.

By the Court: I sustain the objection to leading.

By Mr. Lobrano:

Q. What did he say with reference to this being his hat? Did he point that out as being his hat?

A. He pointed that out as being the hat he left in Meadors' place that he wore there.

Q. Where did he carry you and show you this stuff?

A. Carried us over in the mountain behind this Rock Hill, and carried us to a tree top over there in those mountains in a big hollow, and got the coat, and pocketbook and pants.

Q. You say the coat? You mean this black box?

A. Yes, sir.

[fol. 140] Q. What else was in there? What was in the box, if anything?

A. Fountain pen, pencils and pocketbook, with one dollar in it.

Q. What did he say about who took that stuff up there and put it down there?

A. He said he carried it.

Q. Is this the fountain pen that was identified?

A. Yes, sir.

Q. That was identified this morning by Mrs. Meadors?

A. Yes, sir.

Q. And this is the two pencils?

A. That is the pen and pencils in the box.

Q. And he pointed that out to you?

A. Yes, sir.

Q. How about this pocketbook?

A. That pocketbook was in the box.

Q. And this glass jar wasn't there, of course, was it?

A. The jar—we went further on down, and he pointed out a big pine that he had buried the money by. We moved some brush and leaves and dug down in there and picked up all this change. There was $301.85 the best I can remember it, that he said he got.

Q. Did he tell you where he got that from?

A. Said he got it from Mr. Meadors, taken it out of that coat when he hid the coat.

Q. When he was arrested, what kind of clothes did he have on?

A. He had on the clothese he was wearing today, fresh cleaned, just fresh pressed, just had put them on.

Q. What did he say he did with those old clothese, the ones he had on when he beat Mr. Meadors up?

[fol. 141] A. Carried them to Newton Cleaners to be cleaned because they had blood on them.

Q. Did he take you there to those clothes?

A. Yes, sir; we have them here today.

Q. Did he take you——

A. (Interposing:) No, sir, he took Mr. Gunn and Mr. Danner.

Q. That is where he carried you?

A. No, sir, I beg your pardon. He told us where the clothes were. It was late at night. We went down and got Mr. George Newton to go there and get the clothes for us. He identified those as his clothes that he took there that day to be cleaned.

Q. Which Newton is that?

A. Mr. George Newton, Jr., I think. There are two George Newtons.

Q. You found the clothese and that is the clothes there?

A. Yes, sir.

Q. Did he tell you up there in that jail that he hit him with this hammer?

A. Yes, sir, he also showed me how he wiped the blood off that on that sweat shirt.

Q. After he told you that and carried you out there, state whether or not you obtained the County Court Reporter and she took a statement up there in the jail in detail as to what he had done so far as this crime was concerned?

A. He did; yes, sir.

Q. That was made, part of it was made in my presence, wasn't it?

A. Yes, sir.

[fol. 142] Q. And you questioned him about it?

A. Yes, sir.

Q. Did he know that you all were deputy sheriffs? Was he advised you were deputy sheriffs?

A. Yes, sir; he knew we were officers.

Q. Was any hope or promise of reward offered him up there, Mr. Ruffin, in your presence?

A. None whatever; no, sir.

Q. Did he voluntarily go out there and show you those clothes and the things out there?

A. Yes, sir.

Q. Went himself in the company with other officers?

A. Yes, sir.

By Mr. Lobrano: Take the witness.

Cross-examination.

By Mr. Broadway:

Q. Mr. Ruffin, what time did you get up in the jail that day where this man was?

A. Well when I went up there to stay it was after court hours that day. I don't remember the exact time.

Q. That was after five o'clock?

A. About five, I imagine. I was in on the investigation that morning until about two o'clock that day, and then I was in the court room here until about five I think.

Q. You mean you participated in the interrogation of this boy on two different occasions that day?

[fol. 143] A. Yes, sir.

Q. Until about two o'clock in the afternoon, and then beginning about—when did you begin on the first time that day?

A. I didn't talk with the boy but very little in the early part, I mean in the early part of the afternoon.

Q. You didn't talk to him but very little?

A. Yes, sir.

Q. And when you got up there about five, or a little after five, how long did you stay up there and participate in that questioning?

A. For about an hour or an hour and a half.

Q. And during the time you were there who all was in there?

A. Pitts with the Highway Patrol, Max Brunson, Constable, Martin Gunn, Fred Elvidge, Levi Gray and Russell Danner. I don't remember whether all of them was there now all this time or not.

Q. Were all of those men whose names you have called in there at the time you got up there after court adjourned that day?

A. Well they were in and out of there. We had lots to do. We were all awfully busy. I wouldn't say all of them were all the time, but they were in and out and about.

Q. But the question is, were they in there that afternoon after court adjourned?

A. I couldn't say about that.

Q. You know the questioning of this negro had been going on off and on ever since he was locked up?

A. No, the negro had not been questioned ever since he was locked up.

[fol. 144] Q. You said you were up there at two o'clock and it was going on, wasn't it?

A. We talked to the boy, locked him up, and the other officers went on and later came back. They were out there getting up the other evidence as far as searching the evidence, such things as that.

Q. The point is, Mr. Ruffin, do you know whether or not some of them began questioning this boy right after he was locked up? Do you know about that or not?

A. I couldn't say about the minute, no, sir.

Q. How long were you up there, how many minutes were you up there before two o'clock that day, minutes or hours or whatever it was first? He was arrested about what time?

A. I think he was arrested around one or one-thirty.

A. All right, sir, that would give thirty minutes or an hour before two. Were you up there then assisting in the questioning of the defendant?

A. No; the boy wasn't being questioned all that time, because we taken the shoes off, taken them out there and tried them in these prints.

Q. That the first thing you did?

A. That was about the first thing done on the case. Too we had the hat, we tried to get identified by some other people. We had to carry this hat around to some other folks to get them to identify Buster's hat he was wearing that morning. That taken up the bigger part of the afternoon, or those two or three hours I was busy in court here. Pitts

and Russell and Mike Nichols, I think, was doing the most of that, and Max Brunson.

[fol. 145] Q. Who took the shoes off and left them to go out there?

A. I took them off, carried them out there myself.

Q. All right, who went with you?

A. Well it is hard to say. I don't believe I could say who went on that particular trip.

Q. All these officers didn't go with you?

A. No.

Q. When you left then to do that, that was twelve o'clock that day?

A. Yes, sir.

Q. And you left some of the officers up there talking to him, didn't you? When you left some of them were in there talking to him, weren't they?

A. No; there wasn't anybody talking to him when I left.

Q. There had been before that, hadn't there?

A. Yes; Pitts and Russell arrested the negro and they talked to him some then. And I went to the funeral home and left the funeral home and went out there with the shoes to the place and made the tracks around there by the side of these other tracks when we were getting ready to make these plaster paris prints we had and I carried the shoes out there myself to see for sure that it was the same track.

Q. Now, Mr. Ruffin, all the questioning, so far as you know anything about, and the securing of any alleged confession, took place in the jail office, didn't it?

A. Yes, sir; except the time Pitts, one of the Highway Patrolmen, Pitts and Deputy Sheriff Danner arrested him and brought him on up there.

[fol. 146] Q. Except for whatever questioning they may have done in bringing him from the point of arrest to the jail, the questioning was had in the jail office of the jail?

A. That's right.

Q. And do you know what part of the jail he had been placed in when he was arrested?

A. No; I don't know the cell. I imagine he was put up there in the jail.

Q. Yes, sir; I am sure of that. But do you know whether he was placed in the condemned cell on the top part of the jail, or not, the highest part of the jail?

A. No, sir; he was not placed up there until we got through with the case.

Q. Until you got through questioning him?

A. Yes, sir.

Q. And you got through questioning him that night about what time? What time that night did you quit?

A. Well that could range—you talking about the time we got through taking the confession or questioning?

Q. When you got through with the man that night?

A. Well it was about eight o'clock I imagine near as I could get to it, just roughly guessing.

Q. And during all that time, he had been there in the jail office, and was being questioned by some seven or eight of you officers, wasn't he at different times?

A. Yes, he was being questioned.

Q. Are these the names you called over who were up there [fol. 147] when you got there that afternoon: Martin Gunn, Russell Danner, Mike Nichols, Levi Gray, Max Brunson, Fred Elvidge and Pitts?

A. I wouldn't be sure they were every one there when I walked in the jail office that afternoon. I wouldn't be sure they were all there, but if they wasn't there, they were in and out doing different things different times. Say, while Russell and Mike went out to pick up the casts after they were set up, they came back in from out there, then they went back there looking for the bottle he said he cut the man with. He pointed out a particular bottle that you could find jags on, a green 7-Up bottle that he said was laying by the side of the dead man that he hit him with; that the bottle bursted and he went to hammering him over the head, went to hitting him with that; then he reached under the counter about twelve or fourteen inches from the floor and this hammer was laying there, and he said he reached under there and got the hammer and worked on him with that—well he said he didn't know how many times he hit him with the hammer.

Q. The main inquiry is what occurred in the jail office. As I understand, you don't know then from two to five o'clock whether he was being questioned or not?

A. Well he was being questioned part of the time; he was not being questioned all that time.

Q. I understood you to say you were down in the courtroom during that time, and assisting in the courtroom in regard to the trial of the Wilson case?

A. Well I wasn't up there in the jail, but I knew what was going on.

[fol. 148] Q. You knew he was being quizzed all that time?

A. No.

Q. All right, sir, what part of that time that he wasn't being quizzed?

A. I could not know any definite time as to that.

Q. So far as you know of your own knowledge that was going on all afternoon?

A. No.

Q. So far as you know of your own knowledge? You were up here?

A. Well when I left up there, there wasn't anybody questioning him that time. I was in and out several times during that afternoon and night, and part of the time the negro was not being questioned when I left out of that jail office.

Q. And that was before two o'clock or after five o'clock when you were up there?

A. Well that was when I come to the courtroom.

Q. That was when you came to the courtroom at two, or just before two that day?

A. Well it was pretty close to two. I don't know whether it was on the dot, right after, or a few minutes before, but it wouldn't vary many minutes from two o'clock.

Q. During that time you know about, did this negro have anything to eat or drink?

A. No, I don't know whether he had anything to eat or drink or not.

Q. I mean the time that you know about?

[fol. 149] A. No.

Q. You mean, no, he did not have it?

A. He did not have anything to eat during the time I was up there.

Q. Anything to eat or drink?

A. Well he might have got a drink of water. We had a pitcher of ice water in there.

Q. I am talking about what you know?

A. Yes, I know he had a drink of water.

Q. Did you see Mr. Max Brunson offer him a glass of water, then take it away from him and not let him have it?

A. No, I didn't.

Q. Mr. Ruffin, of course, what went on between this man, the defendant, and the officers up there at times when you were not there, of course you don't know, and I believe you did say that you knew——

A. (Interposing:) That's right.

Q. That except for brief intervals he was being questioned all that afternoon?

A. No, I didn't say for brief intervals. I said that he was not being questioned all the afternoon.

Q. Mr. Ruffin, I understood you to say the first thing you did was take off his shoes, and did you hear any part of his confession then?

A. No, sir.

Q. You took off his shoes, and immediately left to go out there to make certain comparisons and investigations?

[fol. 150] A. Yes, sir.

Q. And that was before two o'clock that day, or was it after five?

A. Well that was before two o'clock when I carried the shoes out there and compared them. That was before I came back to the courtroom. As far as the time, I couldn't say definitely what time.

Q. Now then, from five o'clock on until the investigation and interrogation of this man was completed that night, were you in that jail office up there with them?

A. Yes, sir; pretty well all the time.

Q. Now during all the time that that man was in that jail office and being questioned by you men, there was not anybody present but you officers and the defendant?

A. That's all.

Q. There was no kinsman of the defendant there? He did not have an attorney there, nor anybody there that was interested in taking care of his interest there?

A. No, sir.

Q. And you remained up there from the time, continuously in the jail office, from five o'clock until the investigation and interrogation of this man was completed that night?

A. Yes, sir.

Q. You were in there all the time?

A. Yes, sir.

Q. Mr. Pitts was in there all the time, wasn't he?

A. I think he was.

Q. And Mr. Max Brunson was in there all the time, wasn't he?

[fol. 151] A. Yes.

Q. Then the first you knew of him telling anything in the nature of a confession about jugging him with a bottle, hitting him with a bottle, was about long after you got up

there that afternoon about five o'clock? About how long after that was that?

A. It wasn't very long, because we went and got the money and all that stuff, made that round and got back here before dark. I don't remember about the time when it was.

Q. You had already been out and got the money?

A. Before dark.

Q. Well had he told you where it was?

A. Yes, he carried us to it.

Q. There is kept up there in the jail, is there not, a leather strap?

A. No, there is not a leather strap kept in the jail.

Q. Say something like about that, long leather strap?

A. Long leather strap?

Q. Yes?

A. I had not ever seen it, no, sir.

Q. You hadn't ever seen it?

A. No.

Q. And you don't know whether there is one kept up there or not?

A. I don't know if there is one kept up there.

Q. Do you tell the court that this man was not struck any blows at all before he started making a confession insofar as you know?

[fol. 152] A. As far as I know he was not struck.

Q. That didn't take place in your presence at any rate, did it?

A. No, he wasn't beat in the jail.

Q. Did you hear Mr. Max Brunson tell this boy that if he would tell it, he would try to make it light on him?

A. No, sir, he didn't.

Q. You didn't hear that?

A. He didn't tell him that, not while I was up there.

Q. Did you hear him tell him, or did any of the rest of them tell him in your presence, or did you tell him that you might as well tell us about it, we are going to get it out of you anyhow, or words of like effect?

A. Tell him what now?

Q. That you might as well tell us about it, that you lied to us, you might as well tell it to us, we are going to get it out of you anyhow?

A. Well we knew he was lying. We had compared the tracks, found the blood.

Q. I didn't ask you that. Did you make that kind of statement, or were words to that effect made in your presence?

A. No, wasn't made in my presence.

Q. Nobody told him in your presence? You didn't tell him "You are lying to us about it. You might as well tell us the truth about it, we are going to get it from you anyhow," anything like that occur in your presence?

A. Well I don't remember that being told to him.

[fol. 153] Q. You don't remember that being told to him? Did you tell him that if he told it, you would try to make it light on him?

A. I did not.

Q. And you say, I believe, that as far as you know you heard nobody make that statement in your presence, or one to that effect?

A. Nobody told him that.

Q. Of course you mean while you were present and while you could hear it?

A. That's right.

Q. But you do admit that he was told a number of times that he was telling lies about it, and he might as well tell the truth? Do you admit that?

A. I admit that we questioned him and we tried to reach the truth, and tried to get facts, and we did get the truth and facts at the end out of him.

Q. Read the question back to him please?

(Question read by the Court Reporter): "But you do admit that he was told a number of times that he was telling lies about it, and he might as well tell the truth? Do you admit that?"

A. Well I don't remember whether it was used in those words or not. I don't remember whether he was called a liar or not, but I know we kept questioning him because we knew what he was telling us at the time was not true.

Q. And you were making statements to him, he was lying to you? You were telling him, not only did he know it, but you were telling him that you knew he was lying to you?

A. Well I don't know whether he was told that or not, but [fol. 154] somebody might have said that to him.

Q. You now admit somebody might have said that to him? Mr. Ruffin, I want to ask you this, do you remember what time it got dark that day?

A. No, I don't.

Q. About what time, I know you wouldn't remember exactly. Do you remember about what time?

A. I don't remember.

Q. You had gotten back from out there making your investigation I believe you said, just a little before dark?

A. Well it was between sundown and dark when we got back to the jail.

Q. And except for the time—by the way, how long did it take you to go out there, do that, and get back? About how long?

A. Well I don't know, the time we drove out on the mountain, and we walked about—it is three hundred yards on to the woods, and then this tree—he first made two or three mistakes. He couldn't find the right place where he had buried the money. I imagine we were out there, gone from the jail and back thirty minutes, maybe forty.

Q. Was he with you then?

A. Yes, sir.

Q. Now, Mr. Ruffin, before you took him out there—you carried him in a car, didn't you?

A. Yes, sir.

Q. And who all went along on that trip?

A. Fred Elvidge, Pitts, Max Brunson, Martin Gunn, the [fol. 155] defendant, and the trust- in the jail, Bud Williams, and myself.

Q. He was both handcuffed, both hands, and a chain run between his legs, and that chain fastened onto a trusty, wasn't he?

A. Yes, sir, he was handcuffed, sure.

Q. Well a chain was on there too, wasn't it?

A. Yes, sir.

Q. And the end of the chain that came back around to his belt line in the back was fastened there and then in addition to that fastened onto the trusty, wasn't it?

A. Now the chain wasn't fastened to the trusty. We have got a pair of handcuffs we can put on a man has about a six foot chain on it, you can put on a man and keep him from running. We put the pair of handcuffs on him, and the trusty carried the chain.

Q. That chain went from the handcuffs between the legs, came up to the back and fastened back here to his belt?

A. No, sir.

Q. It wasn't?

A. No, sir.

Q. Then that end of the chain to his back was in the trusty's hand?

A. The other end of the chain was in the trusty's hand.

Q. And the other end was the end to his back?

A. Wasn't any to his back.

Q. All right, tell me how that chain fastened, where it went to his back?

A. It could have been on either side. If it was between his legs—I don't know—he might have stepped over it. I [fol. 156] don't remember that.

Q. Do you remember how it was fastened before you started out with him?

A. I know it was fastened to his hands. The chain came out on his hands. This trusty who assisted with him, Bud, had the other end of the chain in his hand.

Q. Then the other end of the chain was just loose when it was first put on there?

A. When it was first put on there it was, yes.

Q. During all that time there wasn't anybody along interested in this defendant or his interests, was there? Nobody but him and the officers?

A. No, there wasn't none of his family along or any of his friends or connections, I don't have no idea. There was just a bunch of officers there trying to get facts.

Q. Just a bunch of officers and the defendant?

A. That's right.

Q. Now, Mr. Ruffin, do you tell the court that prior to his telling you officers anything about where the money and clothes were, or making any statement in the nature of a confession, that this man was not hit?

By Mr. Lobrano: Now I object. He has asked him that and he has answered. He asked that identical question a while ago.

By the Court: You object on the ground of repetition?

By Mr. Lobrano: Yes.

[fol. 157] By the Court: Sustained.

By Mr. Broadway: If the Court please I don't remember that I asked that question or went into it—I may have casually—but I want to get into leading up to the events and occurrences now prior to going after these articles, and I don't think it has been gone into and brought out with anything more than casual questions, if that much. I don't

recall it. I think the investigation, being in the absence of the jury, ought to be thorough in this matter.

By the Court: My recollection is you had asked him that question point blank, and he said he had not been struck or hit in his presence, and if he had he didn't know it.

By Mr. Broadway: Well, with your Honor's understanding of the answer being such, I won't question him any further along that line.

By Mr. Lobrano: Let him answer it, Judge, if it will save time.

By Mr. Broadway:

Q. All right, answer the question then, Mr. Ruffin?

A. He had not been hit.

Q. Don't you know, Mr. Ruffin, as a matter of fact that that afternoon along near dark, that this boy in the presence of you officers and of nobody else but you officers and him, some seven or eight of you, maybe nine, in the jail office was made to strip off his pants and lie down on the floor; and that he was hit there repeatedly with a leather strap in the hands of Mr. Max Brunson on one occasion and Mr. Pitts [fol. 158] on another?

A. No.

Q. And isn't it further a fact that during that procedure or part of it, that some one of you was standing on his legs, and that one of you had your *h*oot on his head, with him lying on the floor on his stomach?

A. No.

Q. And you say that nothing of that kind occurred?

A. Nothing like that happened.

Q. By the way, did you have—I don't suppose you did, but the only way I can find out definitely is asking—you had not seen this boy at any time prior to that time, prior to that afternoon late when he had his trousers off so you could see whether there were any marks or scars on him?

A. Yes, we undressed him up there and looked him over.

Q. You mean before two o'clock that day or afterward?

A. That was when we were getting the clothes up. We changed clothes; we taken his clothes off. He had on a pair of underpants under these clothes. We taken them off of him. That was early in the afternoon, about two o'clock.

Q. Before you came down here to court?

A. Yes.

Q. Did he have any scars, or marks, or bruises on his legs or back, or any part of his body?

A. Yes, he had some bruises on him.

Q. Where were they?

A. There were scratches all over his arms. That was one thing that lead us to believe so firmly in the beginning that [fol. 159] he was the one did it, look like he had run through the woods, scratched his arms up.

Q. You say there were scratches on his arms?

A. Yes, sir.

Q. All right, other than that what marks on his body were there? Any?

A. Yes, there were marks on him.

Q. Where were they and how many were there?

A. I didn't check them, didn't get the exact places where they were, but he was skinned up some.

Q. And that looked like he had run through bushes in the woods, or something of that kind?

A. Yes, he looked like--yes, sure.

Q. Looked like he was scratched up from that? Now other than scratches or bruises that appeared to you to be occasioned by his running through briars or bushes and things of that nature in the woods, were there any other marks on him?

A. Yes, marks all over him, where he'd wallowed on the bottles, heater and that place out there when he was killing Mr. Meadors.

Q. It was your judgment they were caused by wallowing on the floor in the difficulty in Rock Hill?

A. It was a lot of blood on him. He was bound to have been down somewhere. He said so.

Q. I know, but the question was the marks that were on him were marks such as appeared to be in your judgment as he had gotten in a tussle in that building?

A. Yes, sir.

[fol. 160] Q. Other than these scratches?

A. Yes.

Q. Now that is all the marks you saw on him, was it, Mr. Ruffin?

A. Yes, that is all the marks I saw on him.

Q. Now then you have told us about—let me see if I have got it here, I think I have. It will be repetition, but I want to get it clear in my own mind—that on his arms there were scratches looked like he had gotten going through the woods

and about on his body, you don't remember where, there were marks indicating or appearing to you in your judgment to be such as he would have gotten wallowing around on that floor of that place out there? That's right now, is it?

A. Well, he said that he got down on Mr. Meadors out there on the floor and those bottles—here were four or five or six cases of bottles emptied out, broke around on the floor, and all that blood. He said he had been down on the floor with Mr. Meadors.

Q. Yes, but the question was the marks other than the scratches appeared to you to be such in your judgment as would have been made or occasioned by wallowing on the floor in Rock Hill?

A. Well, he could have had, I don't see why he didn't have more than he did on him, being down in this broken glass like he was.

Q. But the question is that it is your judgment——

A. (Interposing) Yes.

Q. That they appeared to be such as would have been gotten in that kind of a way?

A. Yes.

[fol. 161] Q. Those marks other than the scratches on his arms, do you remember what part—I believe you said you did not remember what part of his body they were on?

A. No, I don't.

Q. Well, do you remember whether they were above his waist line or below it or on his legs?

A. Well, he had some scratches on him below his waist, I know. I don't remember pulling his undershirt off, I don't believe.

Q. I am speaking particularly, Mr. Ruffin, not about the scratches now, about these other bruises that you say would appear to you in your judgment to be such as could have been gotten out these tussling around on that floor out there. Do you remember whether they were on his waistline, below his waistline, or between his waistline and legs?

A. Part of it was below his waistline.

Q. Well, now except for the scratches on his arms, any bruises above his waistline?

A. He had a scratch inside on his nose of his right eye, inside, right on the edge of his nose, right on the corner of his eye, one scratch bleeding a little bit.

Q. Other than that scratch, and the scratches on his arms, were there any other marks on his body above the waistline?

A. Yes, sir, his hands were bleeding some, appeared to be from cut glass and stuff.

Q. All right, you have your hand placed just on the inside of the right eye, and his hands and his arms, arms having scratches on them, hands bleeding a little, and a scratch [fol. 162] placed between the right eye and the nose. Now there, were there any other marks above his waistline?

A. I don't remember seeing any other scars above his waistline.

Q. Mr. Ruffin, I ask you the question of whether or not the man was hit, but that is rather general. I want to particularize it, and the Court said I had already asked that question. Was this man struck in the stomach up there by any of these officers with a "billy," or with a fist, at a time when he was sitting down in the window on the east side of the jail office?

A. No, sir.

Q. He was not? Several of the officers did have their "billies" on them?

A. Some of the officers carry them all the time, yes, sir.

Q. And they had them on at that time?

A. I don't know.

Q. Well, you said they carried them all the time.

A. Well, some of them carry them all the time, but I don't know whether these particular officers up there had their "billies" on them at that time or not.

Q. Isn't it a fact, Mr. Ruffin, that he was struck in the stomach some several times with a "billy" and with fists, and after that was told that "You just as well tell us all of it and tell us the truth or this is not the beginning of what is going to happen to you if you don't"?

A. No.

Q. You deny that?

[fol. 163] A. Yes.

Q. You deny that you laid your hands on him?

A. I deny anybody laying their hands on him up there in the jail.

Q. And of course while you were present? You don't know what happened when you were not there? You so qualify your question?

A. That's right.

Q. I mean your answer?

A. Yes.

Q. I believe you said you took his shoes off yourself, Mr. Ruffin, is that right?

A. Well, I wouldn't say that I untied his shoes and pulled them off his feet myself, but I got his shoes. Some of us did it in my presence, I was there when that was done.

Q. Mr. Ruffin, do you recall whether this boy was made to pull off his own shoes, or somebody take them off of him?

A. Well, since you mentioned it, I think we told him to pull his shoes off, and he pulled them off.

Q. Did you advise this man that any statement he made would be used against him?

A. Well, there was so much said and going on up there until I don't know. We were questioning that boy and it was several officers there questioning him, and I don't remember whether the boy was advised of that or not. I always do. If I didn't, it was the first time I didn't. I don't recall telling him what he said would be against him.

Q. Or would be used against him?

[fol. 164] A. Always before we start taking a statement, we do tell them, and I am sure we told him that.

Q. As a matter of practise and policy you do that, and you think you did that on this occasion?

A. Well, we did do it.

Q. You now say you did do it?

A. Yes.

Q. You were able to recall in that little time definitely you did do it? You first answered you didn't know whether you did or not. Now you say you can recall definitely you did do it?

A. Yes, he was told that.

Q. You know who told it to him?

A. Well, I don't remember whether I did it or Mike Nichols did it.

Q. Was that the way it was said to him, or was it said in some other way, and if so, what other way was it said?

A. Well, that is getting too much whenever you want us to repeat it word for word.

Q. I just want to find out.

A. Well, I always head my statements by telling a man whatever he says will be used for or against him in his trial.

Q. And that is your customary and usual practise, and that is the way you put it when you do tell a man?

A. Yes.

Q. Now then do you recall—I believe though you said you told him that yourself, is that right? I don't want to get you down in my memory wrong.

[fol. 165] A. I think Mr. Nichols is the man told him that.

Q. And did he say it about as you have just indicated here you customarily do?

A. He adds a whole lot more to it.

Q. Can you tell the Court, may be not in the exact language, but as near the exact language of Mr. Nichols as you can, what he told?

A. Well, if I had the heading of some statements, I would read one, but anyway it usually goes on to say that a man is of sane mind, able to read and write and knows what he is doing and what he is saying and is able to understand plain language and is of legal age and whatever he says could be used for or against him in the case or in the trial of the case, and names the officers that were present, and a long routine like that.

Q. Are you telling now about the usual form used in a written confession, is that what you mean?

A. Yes.

Q. But I asked you about what Mr. Nichols said to him there. Could you tell us the language he used or the terms of the language he used in telling what he might say would be used against him?

A. No, I couldn't go over it word for word what he told him.

Q. All right, Mr. Ruffin, what is your judgment as to this boy's weight?

A. About 140 and 145.

Q. You think he would weigh 140 or 145?

A. Well, he looks to be about that weight. I haven't weighed him.

[fol. 166] Q. Mr. Max Brunson would weigh about what?

A. I don't know. I imagine better than 200.

Q. And Mr. Pitts would weigh about what?

A. About 220.

Q. Now Mr. Pitts' regular employment is with the Highway Patrol, isn't it?

A. That's right.

Q. And he is also a Special Deputy Sheriff of the Sheriff of this County?

A. That's right.

Q. Mr. Max Brunson is the Constable of this Beat?

A. Yes, sir.

Q. And the rest of you officers who were up there at any time you know about were Deputy Sheriffs, is that right?

A. That's right.

Q. And that included Mr. Danner, Russell Danner, Mr. Fred Elvidge, Mr. Martin Gunn and yourself?

A. That's right.

Q. And Mr. Pitts?

A. Mr. Gray, the Jailor, was there.

A. And Mr. Gray, the Jailor? That's right. Mr. Ruffin, did you participate in any questioning of this man on Tuesday after this Monday we have been talking about?

A. It was either, it was about, I think it was Tuesday when he told us about the hammer, and we went out there and got the hammer, and he identified this hammer as the hammer he used.

Q. Was that on the same occasion the clothes were found [fol. 167] down there about 300 yards back of Rock Hill?

A. No, sir, he was carried up there, and showed them the clothes on Tuesday, and I believe it was Wednesday when he identified the hammer.

Q. And was it on Monday, Tuesday, or Wednesday, that he carried you out there and showed you where the money was?

A. He showed us the money Monday afternoon.

Q. Then that is the trip you have made out there and gotten back from between dusk and dark that afternoon?

A. Yes, sir.

Q. That was the trip out to get the money?

A. Yes, sir.

Q. That was near Old Uncle Neallus Nettles' house, wasn't it?

A. Yes, sir.

Q. Now then, you carried him out there and he showed you where the money was on Monday afternoon?

A. Late in the afternoon.

Q. And on Tuesday, you carried him out there, and he showed you where the clothes were down back of Rock Hill about 300 yards back of Rock Hill?

A. That's right.

Q. And you say you think it was on Wednesday that he identified the hammer?

A. Yes, we went and got the hammer, brought it up there, and he identified the hammer, said that was the hammer.

Q. And you did not carry him out there? You got the hammer and brought it to the jail?

[fol. 168] A. Yes.

Q. Now did the investigation of this matter and the interrogation of this defendant end with that incident on Wednesday?

A. It ended with the day that he identified the hammer as far as I know.

Q. And that was on Wednesday?

A. Yes, I think so.

Q. And about what time of day?

A. I can't recall.

Q. Well, was it in the afternoon?

A. Yes, sir.

Q. Now that did end the investigation and interrogation of this defendant? You say that ended the investigation and interrogation of this defendant?

A. As far as I know, yes.

Q. And insofar as you were concerned, that was the end of it as an official of the County, Deputy Sheriff?

A. Yes, because we had all the evidence we needed.

Q. Well, that ended the investigation whether it was because you were satisfied you had all you needed or not, didn't it? It did end there, that's what I'm trying to get at?

A. Yes, it ended.

Q. Can you recall, Mr. Ruffin, whether that was comparatively soon after noon that day, or the middle of the afternoon, or——

A. (Interposing): I have no idea. It was sometime in the afternoon.

Q. I know you couldn't tell me the time, but I was just [fol. 169] trying to get the part of the day, if you could, or the part of the afternoon?

A. No, I couldn't.

Q. Mr. Ruffin, what time Monday, I mean, Tuesday, the 12th, did you participate in any questioning of this man, or getting him and carrying him out anywhere?

A. I did not question him Tuesday, or I did not carry him out. Mr. Gunn and Mr. Danner with A. B. Mosley from Jackson, with the Highway Patrol, and several other officers, were here in the Court Room during that trial, and I told them to carry him out there and get that money, and

get those clothes, I mean out of that brush top. That was about half a mile off the road down in the woods.

Q. And on Tuesday that is the only connection you had with it?

A. I didn't talk to him Wednesday at all myself.

Q. Tuesday, I am talking about.

A. Tuesday I did go up there and let him identify the hammer, Mr. Pitts and me.

Q. I understood awhile ago you did not bring the hammer until Wednesday?

A. Wednesday, I mean, after we got through with the Wilson trial.

Q. Then on Tuesday you did not talk to him at all?

A. Didn't talk to him at all on Tuesday.

Q. Then the only connection you had on Tuesday, as I understand, you gave certain instructions to some officers about faking him out yonder and getting some clothes?

A. That's right.

[fol. 170] Q. And you were down here at the time you gave those instructions?

A. Yes, I talked to the boys right here at the front of the Court Room.

Q. Then you did not have anything to do with any questioning of him at all on Tuesday?

A. I don't think I seen him Tuesday.

Q. Mr. Ruffin, you stated a few minutes ago, you first stated, that some of you officers took his shoes off and then when I asked you if you remembered definitely whether he was told to take them off, and took them off himself, or some officers took them off, you said you believed he took them off himself after some officer telling him. Can you be definite about that?

A. I didn't take them off. I remember definitely he took them off himself.

Q. That is clear in your mind now, he did take them off himself?

A. That's right.

Q. He was told by some of you officers to take them off?

A. To pull the shoes off.

Redirect examination.

By Mr. Lobrano:

Q. Mr. Ruffin, you were asked about whether he had any water or not. At the time you were getting this statement, didn't you buy him a Coca Cola?

A. Yes, sir, and he drank it.

Q. He asked you about how long you questioned this man. Did you question this man anything like as long as Mr. Broadway questioned this jury yesterday?

[fol. 171] A. No, sir, I didn't question him anything like as long as he questioned me.

By Mr. Lobrano: That's all.

Re-cross examination.

By Mr. Broadway:

Q. What day was it—was it Monday that this young lady was called in up there, stenographer, and took down his statement?

A. It was Monday evening, after we got back from getting the money, when he confessed and told us where the money was, we immediately taken him out, went out there and got the money, and when we came back, we got the stenographer up there and taken his statement down.

Q. And of course you had him with you when you went out after the money?

A. Yes.

Q. And is that the trip you said you thought you were gone on about thirty minutes, or is that the other one?

A. That is the trip we were gone on about thirty minutes.

By Mr. Broadway: I believe that is all.

By the Court: Anything further.

By Mr. Lobrano: No, sir, Judge, that is all we have to offer on the confession part.

By the Court: Mr. Broadway, you wish to offer any proof?

[fol. 172] By Mr. Broadway: If the Court please, I submit that if that is all he is going to offer, with the man being lots of times, when this witness wasn't present, he is the only one so far that has been offered on it, and the other officers were present; that he would have to show by all of those officers that none of them offered him any induce-

ments. We don't have to show anything in connection with it until the proof is offered to show it is entirely voluntary. He has introduced here only one witness and one who was present only a part of the time, covered by the investigation and interrogation of this defendant.

By the Court: Mr. Broadway, the Court is not in a position to direct the State's case. It can rule on what is before him at the time it is offered, and that, I think, is as far as the Court can go. The Court is not permitted to force the State to put on witnesses.

By Mr. Broadway: I understand your Honor rules on the record made.

By the Court: Yes, sir.

By Mr. Broadway: I submit to you as far as the showing made in this record so far, that the voluntary nature and character of the confession is not shown sufficiently to be admitted in evidence. There has been only one of the numerous officers who participated in securing it, to testify, and he admitted that a great portion of that time there was interrogation and questioning of this man going on when he was not present, and therefore could not know what took place.

[fol. 173] By the Court: All the Court can do is rule on what is before him. That is as far as I can go. If you wish to offer any proof, of course, you are at liberty to offer any proof, put on any officers you care to. I can't make you put on any proof, leave any off, or make the State put any on.

By Mr. Broadway: That is not the question. Does your Honor hold that the voluntary nature of the confession is sufficiently shown at this time?

By Mr. Lobrano: I object to asking pre-judgment of this Court.

By the Court: When you get ready for me to rule, I will rule. I am not going to rule until you tell me you are through, so far as any proof you might want to offer on this question.

By Mr. Broadway: I want to ask Mr. Ruffin another question or two.

Q. Mr. Ruffin, I think it is in the record, but I am not quite sure it is entirely clear. From two o'clock until five o'clock you were engaged here in the Court Room on that Monday, February 11th?

A. Well, about that time. I wouldn't be definite on the exact time because you see I was down here in the Court part of that afternoon and I think it was around two or a little after when I got down here, and I think I was back up there about five.

Q. And when you left up there at or around two o'clock, how many officers did you leave there with the defendant in the jail office?

[fol. 174] A. I didn't leave any officer up there because Pitts and Russell went out to get this hat, working on this hat problem. Then they got in on those prints. They went out to get these prints. There wasn't anybody up there when I left.

Q. When you got up there at five o'clock, you called over the names of the men in there in the early part of your conversation——

A. (Interposing:) Some of them parties was with me in the Court Room, went up with me that afternoon.

Q. Well, when you men got up there, who did you find in that jail office?

A. I have said, if I am not mistaken, Mr. Brunson, Mr. Pitts, Mr. Elvidge, and Mr. Gray. I think Mr. Gunn went up there with me as I went from Court down here.

Q. And you of course don't know how long they had been up there before you got there?

A. No, I couldn't say definitely.

Q. It is your understanding that the questioning was going on practically all afternoon?

A. No.

Q. Well, what is your understanding?

A. My understanding was they had only been up there a short time, waiting for us all to get up there so we could question this boy, get along with the case.

Q. But whether they had actually done any questioning or not, you don't know?

A. I don't know.

Q. Now, Mr. Ruffin, something was said here about the [fol. 175] length of time I was questioning the jury on yesterday afternoon. You men questioned that man up there from five to eight o'clock that night, didn't you?

A. No, sir, we were going to get the money part of the time. Part of the time we were drinking Coco Colas, and had the little girl up there part of the time, letting him re-state that thing to her. After he went and got the

money, he went over that thing, told us the same statement where the clothes were, where he hid the money, where he went, who he talked to, and who he saw.

Q. Except for the time it took to get the money, some of you officers were at all times in the jail office with that boy by himself, weren't you?

A. We were, from five to eight.

Q. That is what I mean, and you were in on some questioning before two o'clock, before you came back down to the Court Room, weren't you?

A. Well, I was with him regular from the time I got off from Court. I don't know whether it was five o'clock or not. Sometimes the Judge runs Court a little past five o'clock. Usually, if he is not tied up on some case, he quits at five; but on that afternoon I don't know. We were on that Wilson case. It might have been six o'clock when we went up there for all I know, because we did hold some night sessions on that Wilson case, had some Court late. I don't know whether it was that afternoon or not, but I went up there after Court was over that afternoon and stayed with him until eight that night when we got through.

Q. In other words, the questioning was from two to [fol. 176] three hours of that afternoon or night?

A. Yes.

Q. I understood you to say the early part of your examination that you got up there at five o'clock when Court adjourned?

A. Yes, but I am not positive when Court adjourned.

Q. You went right out at any rate when Court adjourned to the Jail, the Jail office, and this boy was in there then, and four officers were there with him then, whose names you have done called into the record?

A. Yes.

Q. Now how does the time you questioned this man that you know of compare with the time I took up with the jury yesterday afternoon? Just about the same time, wasn't it?

A. Well, we were going in and out the jail and about during that time. We carried this boy out there, and got the money. As far as the time we actually questioned this boy—I wouldn't say he confessed to us. We went and got the money, and he showed us where the clothes were hid

back on the hill, and about where we could find them, and we got the money and come on back and questioned him.

Q. That was part of the interrogation and investigation of this negro, all going on at the same time?

A. That's right.

Q. Now then how does that compare with the time I questioned this jury yesterday afternoon?

A. Well, I couldn't say how long you questioned the jury yesterday afternoon, not accurate, not to be exact.

Q. Well, you were asked, Mr. Ruffin, by the District [fol. 177] Attorney, if you questioned this darky anything like as long as I questioned the jury yesterday afternoon, and you said no. Doesn't the times pretty well jive, about the same time?

A. No, because we were riding, part of that time we were riding going out there.

Q. I understand, but that is still part of your investigation, and in process of your investigation?

A. Then we had to wait until the little girl could get down here to take the statement, too, after we got back from out there.

Q. The negro was under investigation just about the same time I took in questioning the jury?

By the Court: Gentlemen, the Court is going to sustain an objection to that, it is altogether immaterial as to how long it took for you to examine them.

By Mr. Broadway: I thought so, too, when the District Attorney asked it.

By the Court: And you didn't object to it, or I would have sustained it when he asked it. The Court of its own motion is going to stop the procedure on that question. It is just killing time.

By Mr. Broadway: All right, sir, that is all, if the Court please.

By Mr. Lobrano: That is all.

By the Court: Anything further, gentlemen?

[fol. 178] By Mr. Broadway: I believe the State said he rested on this question.

By the Court: The State said he rested.

By Mr. Broadway: The defense rests on this particular proposition.

By the Court: All right, on the evidence as now before the Court, the Court will overrule—have you made your motion in the record?

By Mr. Broadway: I made an objection.

By Mr. Lobrano: There is nothing for the court to rule on then.

By Mr. Broadway: Yes, I made an objection to it and moved that the objection to the admissibility of the confession until it was shown it was free and voluntary, and moved a preliminary examination in the absence of the jury be conducted into that question.

By the Court: As the record now stands, there is no motion to exclude this by the defense. Motion to hear it and I have heard it.

By Mr. Lobrano: And there is an objection to the introduction of the articles.

By the Court: I overrule the objection on the sworn evidence presented:

By. Mr. Lobrano: Now your Honor has ruled simply on [fol. 179] the introduction of these articles?

By the Court: That is all that is before the Court at this time.

By Mr. Broadway: Then we have been wasting time going into the competency of the confession.

By the Court: You requested to go into the competency of the confession.

By Mr. Broadway: Your Honor is not ruling on any confession before the Court?

By the Court: That is all that is in and all I can rule on.

By Mr. Broadway: Note an exception to the ruling of the Court.

(At this point the jury return into open court, and the following proceedings were had in the presence of and within the hearing of the jury:)

A. B. Ruffin testified further on

Direct examination.

By Mr. Lobrano:

Q. Mr. Ruffin, before noon you were asked about these prints. So the jury may understand, tell the jury how those casts were made?

A. Well, this is a track that was found on the ground. It is made upside down, see. We got some little strips of tin we put around the track or print, any print we want to

take, and we make up this cast, is material, is dry powder we make up with water, pour it in there, and it molds the original track as it is left on the ground, the impression of it.

[fol. 180] Q. State whether or not you take up that track as it is shown down there, and the depression that is made in the ground?

A. It will pick it up exactly.

Q. As that track is shown, which is the right side and which is the left side as made on the ground there?

A. Well, it is backward. The right side on the print will be the left side, say, or the left side will be the right side as the track is picked up. You can't fit the shoe on this impression here and make it fit because it is picked up from the opposite side.

Q. Now, Mr. Ruffin, before the jury went out what was the question I asked? I believe I asked you whether or not the defendant took you and pointed out any articles or objects to you that had been shown to you?

By Mr. Broadway: Now if the Court please, in line with our previous objection made, may it be understood we are objecting without repeatedly being on my feet, objecting to this character of testimony?

By the Court: Let the record show that defense counsel makes objection with reference to any articles pointed out by the defendant.

By Mr. Lobrano:

Q. With reference to this metal box that has "J. L. M." written on there, and has been identified as Exhibit to the testimony of Mrs. Meadors, what did the defendant do with reference to pointing that out to you?

A. He pointed this out to the officers as the change box that come from the Meadors place after he had killed him.

[fol. 181] By Mr. Broadway: We object to that.

By Mr. Lobrano: Let that part about killing him go out.

By the Court: Sustained.

By Mr. Lobrano:

Q. Where was that? Did he point that box out to you?

A. It was about a half mile behind the Rock Hill place hid in a tree top.

Q. State whether or not the defendant went there with you and showed you that place there where it was in that tree top?

A. Yes, sir, he went with us. He went with the officers.

Q. Did he or not tell you that he took that box out of the place of Mr. Meadors?

A. Yes, sir, he did.

By Mr. Broadway: Now we object to that for the same reason that it is in the nature of a confession or admission against interest, and whether or not it is entirely free and voluntary would have to be passed upon first by the Court and ascertained before admitting. We object to it until it is shown he voluntarily and of his own accord told them that he took it out of the place and until the necessary preliminary examination to ascertain that has been made.

By the Court: I overrule your objection to that.

By Mr. Broadway: And we move, therefore, for the pre-
[fol. 182] liminary examination to be made at this time.

By the Court: I think we have been into that, Mr. Broadway. I overrule your objection.

By Mr. Broadway: Note our exception to the ruling of the Court.

By Mr. Lobrano:

Q. That is the box that he pointed out as the one having come from the Meadors place?

A. Yes, sir, the box that had the money in it.

Q. What else was in that box?

A. There was a fountain pen and two pencils.

Q. What about this, was this in there?

A. That pocketbook was in there.

Q. This little small coin purse was in there?

A. Yes, sir, it has got a one ollar bill in that.

Q. Now did he point out anything else on that trip?

A. Yes, sir.

Q. What else was pointed out?

A. Pointed out the blue hat.

Q. Which hat? This hat here?

A. Pointed out that hat. This is Mr. Meadors' hat. He lost his hat.

Q. Now you don't know about that. Did he point this hat out?

A. He pointed this hat out, yes, sir.

Q. And where was this hat pointed?

A. It was in a treetop with the box.

[fol. 183] Q. Did it have that same blood stains on it?

A. Yes, sir, it did.

Q. Did he carry you and point out any other objects that have been introduced in evidence here, Mr. Ruffin?

A. Yes, sir, the rain coat and the sweat shirt and a top coat.

Q. Did he take you out there to where that was? Did he take you out to where they were found?

A. No, sir, he didn't carry me. He told me where it was.

Q. Well, that's all right. Don't tell about what he told you. Nothing else then that has been introduced here was pointed out to you? Do you know who went and got the money and the other?

A. I went and got the money.

Q. Who was with you when you found the money?

A. Mr. Elvidge and Mr. Gunn, Mr. Brunson, Mr. Pitts, the trusty, Bud, and the defendant.

Q. Where was this money, Mr. Ruffin?

A. It was buried in the ground by a big pine tree, about 250 or 300 yares off of Hillcrest Drive behind Neallus Nettles' house.

Q. Is that the same direction, that money was found, was that the same direction in which those foot prints left that place, in that direction?

A. Yes, sir.

Q. How much money was found buried there, Mr. Ruffin?

A. $301.85.

Q. Did you all put it in this jar?

A. Yes, sir, we put it in the jar for safekeeping.

Q. How was that money found? In what way. State [fol. 184] whether or not it was wrapped in small packages?

A. It was wrapped in small package mostly, some of the change was.

Q. State whether or not there is silver change and currency in that bottle or in this jar?

A. Yes, sir, there is twenty dollar bills, ten dollar bills, five dollar bills, and one dollar bills.

Q. I now wish to introduce——

A. (Interposing:) There is one fifty dollar bill in the pile, too, in the greenbacks.

By Mr. Lobrano: By consent, we would like to ask that this money be introduced as an exhibit, I don't know what number—to his testimony with the understanding that it was not found in the jar, and the jar is just simply a container. That correct, Mr. Broadway?

By Mr. Broadway: All right.

By Mr. Lobrano: Now, Judge, we would like also to introduce it as evidence with the further understanding that it might be withdrawn.

By Mr. Broadway: That is perfectly all right.

By the Court: Let the record show that it is agreed with defense counsel that the money might be withdrawn.

By Mr. Lobrano: I would like to have, before it is offered in evidence, Mr. Ruffin scratch all the evidence off it, and [fol. 185] everything off the jar, and just leave a little white spot where the stenographer can put an exhibit number on it.

By the Court: All right.

(Jar of money offered in evidence as Exhibit 5 to the testimony of the Witness Ruffin, with the understanding that the money be withdrawn.)

By Mr. Lobrano:

Q. With reference to this hammer, you stated that this hammer was found out there at the scene of where Mr. Meador's body was?

A. Yes, sir.

Q. Was this hammer later shown to the defendant over here, Eddie Patton, by you?

A. Yes, sir.

Q. What did he say, if anything, as to whether—did he tell you where that hammer was before you found it?

A. He said it was laying on the shelf and when he and Mr. Meadors fell why he reached up on the shelf, picked up the hammer and beat him with it.

By Mr. Broadway: We object to it and move to exclude it.

By Mr. Lobrano: Let it go out, Judge.

By the Court: Yes, sir, I will sustain that.

By Mr. Broadway: And we ask that the jury be instructed to disregard that answer of the witness.

[fol. 186] By the Court: Gentlemen of the jury, you will disregard that answer of the witness.

By Mr. Lobrano:

Q. Was this hammer later shown to him?

A. Wednesday.

Q. I say was it later shown to him?

A. Yes, sir, it was.

Q. That was after he had told you where it was?

A. Yes, sir, that was after he told us where it was, and we had gone and gotten the hammer.

By Mr. Broadway: Now if the Court please, you just sustained an objection to that.

A. I am sorry.

By the Court: Well, I didn't sustain the objection. I overrule the objection if you make one to that question and answer.

By Mr. Broadway: I do object to that.

By the Court: Overruled.

By Mr. Lobrano:

Q. Did he tell you this hammer was the hammer he used on this man?

A. Yes, sir, he did.

By Mr. Broadway: I object to that, if the Court please. [fol. 187] By the Court: Overruled.

By Mr. Broadway: It is in the nature of an admission against interest or a confession, and its voluntary character must be determined by preliminary examination in the absence of the jury, and I so move the Court to make that inquiry.

By Mr. Lobrano: Let it go out.

By Mr. Broadway: And we ask that the jury be instructed to disregard the answer.

By Mr. Lobrano: About what the man told him about the hammer?

By Mr. Broadway: Yes, sir.

By the Court: All right, upon the District Attorney withdrawing it, gentlemen, I will ask you gentlemen to disregard what the defendant said he did with the hammer.

By Mr. Lobrano:

Q. Now the day that you went out and found, that he pointed out this money to you, what day was that, Mr. Ruffin?

A. That was on Monday afternoon.

Q. How far from town is the place where this money was found?

A. Well, it is two and a half or three miles.

Q. Mr. Ruffin, I don't know whether I have asked or not, but the body of this man was found there in the place where [fol. 188] Rock Hill is located, that is in Lauderdale County, Mississippi, is it?

A. Yes, sir.

By Mr. Lobrano: You may take the witness.

Cross-examination.

By Mr. Broadway:

Q. Mr. Ruffin, back of that counter, and where this man's body was found, there were broken bottles, pieces of coal and soft drink cases, weren't there?

A. Yes, sir.

Q. Just topsy-turvy back there?

A. Yes, sir.

Q. And did you notice that the stove was out of line, wasn't in its usual place?

A. Well, the pipe was crooked, almost knocked down.

Q. And that the stove had been moved somewhat?

A. I didn't notice whether the stove had been moved, or the pipe pushed over from the stove. The man was laying with his feet almost, well right near the stove.

Q. With his feet right near the stove?

A. Yes, sir.

Q. And which direction was his head?

A. Head lying in an eastward direction under the counter on a 7-Up case, I believe, with some bottles in it.

Q. And how was his head lying in relation to that place where you go under the counter?

A. Laying from that to the right as you go under.

[fol. 189] Q. And how far from that place where you go under the counter?

A. Well, it was in the corner of, the northeastern corner of that building or that room, or behind that counter.

Q. Now there was a general topsy-turvey condition disturbed, disordered condition, back of that counter, with reference to those articles you mentioned, wasn't there? Soft drink cases, bottles, and coal, and the disarrangement you mentioned about the stove?

A. There were some disarrangements back there, sure, yes, sir.

Q. You yourself did not make any examination of the man, any particular examination of the man's body, to determine the parts that were injured, did you?

A. Yes, sir.

Q. You did?

A. There was—I counted around fifty cuts and licks about the head and neck.

Q. About that many about the head and neck?

A. Yes, sir.

Q. Mr. Ruffin, how many did you find at other places of his body?

A. Well, that is about the only place I looked real close.

Q. The embalmer has testified he found only 54 bruises about his entire body?

By Mr. Lobrano: I object to that. It is not proper to tell a man what another one testified. That is contrary to every cross-examination under the sun. We object to it. Let him ask what he found, not call out and pick one witness against another. I object to that.

[fol. 190] By the Court: Sustained.

By Mr. Broadway:

Q. Mr. Ruffin, you say you found about fifty about his face and neck and head?

A. Well, his shirt was unbuttoned down here, and I could see from here up very well. There was so much clotted blood on him, I couldn't check it very well. Then as soon as we got his face clean—I went to the undertaker's myself, the morgue, out at the funeral home, and we counted them.

Q. You say we?

A. Together with some other officers.

Q. Do you remember who?

A. To be exact, I don't know. I know I got John Pat Martin to carry me out there because our cars was all busy.

Q. And you actually counted them?

A. Well, I don't say there was actually fifty. There was I would say between forty and fifty licks on the man's head, some cuts cut into each other, just intersected together, just bruises and cuts all over the man, small cuts,

small scratches, small bruises, then those large ones, two and three inches long.

Q. And some of them were scratches?

A. Wasn't many of them scratches.

Q. You say some of them were, and you are counting them?

A. I counted the ones wasn't just scratches, I counted. I counted where he had been hit.

Q. Then you counted from forty to fifty bruises about the man's head and face from along in his chest there up, [fol. 191] other than just scratches?

A. Yes, sir.

Q. Did you find some broken soft drink bottles there?

A. Yes, there were some broken bottles. Out there at the place you're talking about?

Q. Yes.

A. Yes, there were some broken bottles there.

Q. Several of them?

A. Yes, sir.

Q. Did you find any blood on any of them?

A. Found blood all over the place, all behind that counter from one end to the other.

Q. Just a general bloody condition back of the counter?

A. Well, the most of the blood was at the east end of the counter where the man was laying.

Q. I know, but you say there was just blood all over the place back there, didn't you?

A. Well, there was a good bit of blood back there, but there wasn't any blood at the extreme west end of the counter. There wasn't any blood back there.

Q. Where is that stove with reference to the east or west, or middle of that space back there?

A. The stove is about three feet of the east end of that counter. Over behind the counter, there is a space in there ten or twelve feet wide, eight or ten feet wide I will say, that way—I think that will be more accurate.

[fol. 192] Q. Between the counter and wall?

A. And the wall, and the stove was near the counter on the other end, eastern end.

Q. But some of that place you were talking about was taken up by the stove and by his soft drink cases and by his soft drink counter back there, wasn't it?

A. There wasn't any cases stacked on that extreme eastern end back there.

Q. The cases were all stacked on the western end?

A. Yes.

Q. But he did have a counter arrangement back there—I don't know what you would call it—but at an angle, in which he kept cigarettes and cigars?

A. That was back near the middle or center of the building where the cash register was, immediately behind the ice box.

Q. And the ice box itself extended out from the counter into that space, didn't it?

A. Yes, sir.

Q. And the ice box ran almost the whole length of that counter into that room, didn't it?

A. No, it ran from the doorway to—where you went along the counter, the counter was solid from the floor to the top except a doorway, and then the top of the counter extended over that, you went underneath to get in the counter.

Q. From where that opening was, the ice box extended from there back to the western wall of that room?

A. To the partition. There is a partition in there that separated the front from the back of that place, and there [fol. 193] was a space in there of eight or ten feet that that counter didn't go all the way—I mean the counter went all the way, but the box didn't go all the way. The box was about ten or twelve feet long, I expect. I imagine that would be more accurate.

Q. And how far is that counter from the eastern end to that partition on the west?

A. About twenty, I imagine, about twenty feet, I think.

Q. Then except for a little space up there near where you go under the counter and space at the other end of approximately eight feet, all the rest of the space is in part taken up by the ice box?

A. No, the place you go under from the doorway, the scuttle to go underneath the counter is not on the extreme east end. It is ten or twelve feet from the front door. The counter don't go onto the front door. The counter has got a curve in it, goes to the wall. It leaves a space there of eight or ten feet from the door in there, you see.

Q. From the front door?

A. Yes.

Q. I see. There is a curve then at the western end of that counter?

A. Yes.

Q. It does not go straight then? Right on to the wall? And you say it is about twenty feet from the eastern end to the western end of that room?

A. It is twenty feet or more. I don't know, I couldn't say exactly.

Q. Mr. Ruffin, are you familiar enough with that room out there to draw us a diagram of it?

[fol. 194] A. Yes, sir.

Q. I won't ask you to take up the time of the Court now to do it, but when you leave the witness stand, as soon as you can find time to do it, will you do it please, sir?

A. I will do it.

Q. Indicating the width of that space there, how much was taken up by the ice box, and where the soft drink cases were located, the cash register and cash register table, and the stove please, sir. If you will do that, I will appreciate it.

Now, Mr. Ruffin, this money was found on Monday, is that correct?

A. Yes, sir.

Q. And the coat, and these other articles of clothing, and possibly one or two other articles there that you have been asked about by the District Attorney were found the following day, or was it Wednesday?

A. Found Tuesday afternoon. We could have got them all Monday, but we were pushed for time. It was getting dark on us, and it was about a half mile over in those mountains.

Q. Now you stated awhile ago, in response to Mr. Lobrano's question that the place where you found the money was in the direction that the tracks lead from the building; and you further stated that the money was found back of old Uncle Neallus Nettles' house; and you further stated he lived about two and a half miles from town, and Rock Hill is about four miles. You did not mean to state the tracks led in the direction of Neallus' Nettles' house. Did you mean to say that?

[fol. 195] A. Well, I didn't follow the tracks all the way around, the boy carried me, showed me the money, and told me that was the money he got from Meadors.

Q. What I am talking about, you made that statement, and I feel reasonably certain you did not understand the question, or were mistaken about it, when you said the tracks

in going away from the Rock Hill followed in the direction of Neallus Nettles' house, you did not mean that, did you?

A. No, they didn't go toward Neallus Nettles' house.

Q. They went back of Rock Hill and in the woods?

A. Well, the boy told me where he went, told me the whole——

Q. (Interposing:) I am not asking you about what he told you. I am asking you about the way the tracks led. They did lead in the direction back of Rock Hill, didn't they?

A. Yes.

Q. Now for what distance did you locate tracks out there?

A. For what distance?

Q. Yes, for what distance on the ground did you find tracks?

A. I tracked him to the big branch back down there behind Rock Hill, about three or four houndred yards behind Rock Hill, at the beginning. That was right after we found the man was murdered and we were tracing those tracks.

By Mr. Broadway: Now we object to his statement the man was murdered.

By the Court: Sustained.

By Mr. Broadway:

Q. Do you mean to tell the jury you were able to locate [fol. 196] tracks from near the front part of Rock Hill down through the woods, grass and brushes, down to a branch there three hundred yards?

A. Yes, sir.

Q. You were able to identify, to see and distinguish tracks for that distance?

A. We were able to track a man through them woods there because he was gone in a hurry and left a good bit of sign behind him, because he slipped down one time, and slid along.

By Mr. Broadway: We object to those statements of the witness about being in a hurry and slipped down. He can state the conditions he found.

By the Court: That is in response to your question. I overrule the objection.

A. I am trying to show how we tracked him.

By Mr. Broadway:

Q. Then beginning right back of the house, you got off the premises of Rock Hill proper and got into the grass, and weeds, and woods, didn't you?

A. Got into the leaves and woods, yes.

Q. And that is how far, when you begin to get into the leaves and woods, is how far from the front door of Rock Hill?

A. Well, the way he went down by Mr.——

By Mr. Broadway: (Interposing:) We object to his statement, the way he went down. I am asking about tracks.

By the Court: All right, be sustained as to the way he went.

A. Well, the way the tracks led from the door that we have the impression, the prints there from, was down by [fol. 197] Mr. Pollman's house and out by his little house, a little tin building that he has out behind his house, say a distance of about a hundred yards or more, maybe a hundred and fifty yards, in the open and down the driveway.

Q. But the tracks led into the leaves and woods there right back of Rock Hill, didn't they?

A. No, sir; they led in behind Ben Pollman's house.

Q. All right, sir, now the question was, how far from the front door of Rock Hill, and wherever you began to distinguish tracks, how far from there to where he left, to where the tracks led into the woods or leaves?

A. A hundred and fifty yards.

Q. Then that is approximately half the distance to where you say you found these articles?

A. Oh, we tracked him more than three hundred yards. I can be positive of that.

Q. I understand you said you did, but that is a matter of mathematics. It was just half the distance down there? That's right, isn't it, Mr. Ruffin?

A. Now, we tracked him more than that distance, half the distance down through the woods.

Q. I didn't say that. I say that distance is half the distance you did track him?

A. No, sir; it is not half the distance.

Q. A hundred and fifty yards is not half of three hundred yards?

A. A hundred and fifty yards is half of three hundred yards, but the distance from the Rock Hill to the back of [fol. 198] Ben Pollman's house is in the open, down his driveway and all, is not half the distance that we tracked him on down to this branch and by this old horse lot down there, and down these steep hills, these old spring heads down there that we tracked him to.

Q. In other words, when you say the place where these things were found was three hundred yards from Rock Hill, what you mean to say that that is as the crow flies?

By Mr. Lobrano: I object to that. He didn't say these things were found down there. He said he tracked him down there. I object to it.

By Mr. Broadway:

Q. In other words, Mr. Ruffin, did you track him for three hundred yards in a round about way, or is the spot where you found it on a bee line just three hundred yards from Rock Hill?

A. Where we found these clothes?

Q. Yes?

A. It was almost half a mile from Rock Hill.

Q. Oh, I see. Now what you mean, you were able—the area of Mr. Pollman's house, there is a driveway there, a clear ground, where you can clearly see the tracks?

A. That's right.

Q. And that is a hundred and fifty yards, and you say now you followed these tracks for a half mile?

A. No.

By Mr. Lobrano: I object to that. He didn't say any such thing.

By the Court: Sustained.

[fol. 199] By Mr. Broadway:

Q. Well, what did you say, Mr. Ruffin, about how far you tracked him? I understood you said a half mile.

A. You understood me to say three hundred yards at the beginning, but it was still further than that. I said about that.

Q. All right, did you say about a half mile awhile ago?

A. No, I didn't say nothing about a half mile. I said a half mile to the clothes.

By the Court: Mr. Broadway, he said he found the clothes a half mile from there but he only tracked him three hundred yards or better. He never had said tracks run from the house to down where he found this stuff.

By Mr. Broadway: I am just trying to get it clear. If that is the way he meant it, I am satisfied.

Q. Mr. Ruffin, who made these casts of these tracks?

A. Well, there was about five or six in on it, but Mike Nichols and Russell Danner, I think, picked it up. We were all around helping. I picked out the tracks, told them which one to get an impression of.

Q. Was the cast made then or later?

A. Made right then, or as soon as we could come back to town, get the materials, and make them.

Q. Made right there?

A. Right there on the spot.

Q. And you had a part in it?

A. Yes, sir.

Q. Now you said something about you couldn't fit the shoe [fol. 200] to those casts. That is true, isn't it? You can't fit the shoe in the casts as they are there now?

A. No, sir.

By the Court: Anything further?

By Mr. Broadway: I don't think so, your Honor.

(Witness excuse-.)

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[fol. 201] MARTIN GUNN, called as a witness on behalf of the State, was sworn, and testified as follows:

Direct examination

By Mr. Lobrano:

Q. This is Mr. M. L. Gunn?

A. That's right.

Q. Mr. Gunn, are you a deputy sheriff of Lauderdale County, Mississippi?

A. I am.

Q. Were you such on February 11th of this year?

A. I was.

Q. Mr. Gunn, did you have occasion to investigate the alleged killing of Mr. Meadors out here on the road between here and Quitman?

A. Part of it; yes, sir.

Q. Did the defendant, Eddie Patton over here, point out any articles of clothes anywhere, and did you go out in pursuance of him pointing out, and find any clothes?

A. We did.

By Mr. Broadway: We object if the Court please.

By the Court: What is the basis of your objection.

By Mr. Broadway: The objection made to it previously.

By the Court: I overrule your objection.

By Mr. Broadway: Note an exception.

[fol. 202] By Mr. Lobrano:

Q. Did he, Mr. Gunn?

A. He did.

Q. Did he point out this article of clothing?

A. He did.

Q. State whether or not it was marked, your initials were marked in there?

A. It was.

Q. Where was it that he pointed out that article of clothing?

A. Approximately a half mile back of Rock Hill.

Q. I believe, Mr. Gunn, that has been identified as an exhibit to the testimony of one Mrs. Taylor, who has taken the stand before. Is that coat, a raincoat or overcoat that you hold in your hand?

A. It is.

Q. Where was that coat found?

A. Approximately a half mile back of Rock Hill under a brush top.

Q. What else was in that coat, Mr. Gunn?

A. Inside of this coat was a dress coat, a sweat shirt, a metal container or lunch box, and inside of the lunch box was a purse, fountain pen and two mechanical pencils, and there was a hat wrapped in this too.

Q. State whether or not this was the hat found in there?

A. This is the hat.

Q. Did you so mark it with your initials in the bottom of that hat?

A. I did.

[fol. 203] Q. It is marked? Now is or not this the hat that was marked as an exhibit to the testimony of Mrs. Meadors as being the hat of Mr. Meadors?

A. It is.

Q. What else did you say was found there?

A. It was a dress coat.

Q. Was this the coat?

A. This is the coat.

Q. What else was there, Mr. Gunn?

A. There was a sweat shirt, pretty ragged, lots of holes in it.

Q. Is this——

A. (Interposing): This is the sweat shirt.

Q. Anything else found there?

A. A metal container, a box, lunch box.

Q. Is this the box? You sure that this is the box that you found?

A. Let me see and I will be sure. Yes, sir, this is the box.

Q. Who was present with you when you found that, Mr. Gunn?

A. Mr. Russell Danner, Mike Nichols, and I think a highway patrolman, name was Moreland, and the defendant; and a trusty, "Bud" Williams.

Q. Anything else found there?

A. Yes, sir; inside the box was a purse, a fountain pen, and two mechanical pencils.

Q. Is this the purse that was found there?

A. This is the purse.

Q. Do you know whether or not that is the coin purse [fol. 204] that had been identified by Mrs. Meadors as being the purse that was being kept by Mr. Meadors?

A. It was.

Q. Is this the fountain pen that I hand you?

A. This is the fountain pen.

Q. Is that the two pencils that I hand you?

A. It is.

Q. State whether or not the defendant said, told you whether or not he put those clothes there?

A. He did.

By Mr. Broadway: We object to it if the Court please.

By the Court: Overruled.

By Mr. Broadway: Note an exception.

By Mr. Lobrano:

Q. Whose clothes did he say those were? Whose bloody clothes or clothes—strike that. Whose coat did he say that was? Whose shirt did he say this was?

A. He said it was his.

By Mr. Broadway: We object to that if the Court please for the same reason and it is apparent and obvious that it is an admission against interest in the nature of a confession, and it must appear before it is admitted that he voluntarily, of his own free will and accord told the officers about it.

By the Court: Overruled, That is not in line with the authorities I have read.

[fol. 205] By Mr. Lobrano:

Q. Was anything else found there, Mr. Ruffin?

A. That is all at that particular place.

Q. How far is that? Which direction is that from Rock Hill, where the man's body is claimed to have been found?

A. It is approximately west, maybe a little north of west, little northwest possibly.

Q. How far?

A. Approximately a half mile.

Q. What is the nature of the country around there as to whether wooded thickly, built up, briar patches, or what? What is the nature of it?

A. It is woody, very thick in places, mighty hilly and rocky.

Q. How close to Neallus Nettles' house were these articles that were found located?

A. It is better than a quarter of a mile, I would say.

By Mr. Lobrano: Take the witness.

Cross-examination.

By Mr. Broadway:

Q. What day was it you found these articles on?

A. Tuesday.

Q. Tuesday?

A. Yes, sir.

Q. About what time of day?

A. It was in the afternoon, possibly about the middle of the afternoon.

[fol. 206] Q. You carried this defendant along with you?

A. I did.

Q. And who was with you?

A. Mr. Russell Danner, Mr. Mike Nichols, and this Highway Patrolman—I think his name is Moreland, I am not sure—and the defendant, and Bud Williams, a trusty, and myself.

Q. Mr. Ruffin wasn't along?

A. Mr. Ruffin wasn't along on that trip.

Q. This defendant was handcuffed and had a chain on him at the time, wasn't he?

A. He was.

Q. And how was that chain hooked to him or fastened to his body?

A. The chain was fastened to the handcuffs.

Q. Handcuffs, had his hands out like that?

A. That's right.

Q. And the chain hooked on to the center of the handcuffs?

A. That's right.

Q. Was the other end of the chain fastened any way?

A. It was not.

Q. Did anybody hold the other end of the chain?

A. They did.

Q. Who was it?

A. The trusty.

Q. You carried this man from the jail out there with you, did you?

A. We did.

[fol. 207] Q. So you did not have any part in the making of these casts?

A. I did not.

By Mr. Broadway: That is all for this witness. I want to recall Mr. Ruffin for a question or two before I forget it.

(Witness excused.)

[fol. 208] A. B. RUFFIN, recalled for further

Cross-examination.

By Mr. Broadway:

Q. Mr. Ruffin, from where the tracks started, from the point where you could first clearly distinguish the tracks, at or near the Rock Hill building, as far as they were clear and on clear ground, not in the woods and leaves, could you estimate the number of tracks there were for that distance, or tell us if you counted them?

A. I didn't count the number of tracks that we saw there. I tracked this track all the way across that whole yard, all the way cross down that driveway to the Pollman house, and picked out the best tracks that we taken the impressions of here.

Q. I was leading up to that. You picked out two of the tracks, one of the left foot and one of the right?

A. That's right.

Q. That were the clearest on the ground, that's correct?

A. Yes.

Q. And made the casts of only those?

A. Yes.

Q. And you did likewise with reference to the cast of the heel print, that true?

A. That's right.

Q. And there were for at least that distance from near Rock Hill to at some point near Mr. Ben Pollman's house, where the tracks led off in the woods, there were a great number of these tracks, both of the full foot and of the heel? Necessarily there was a great number of them, wasn't there?

[fol. 209] A. Oh, yes, there was several tracks.

Q. And these prints that you made, both of the entire foot, the casts rather that you made of the entire foot, and of the heel were made from that same series of tracks?

A. Yes.

By Mr. Broadway: I believe that's all.

Redirect examination.

By Mr. Lobrano:

Q. Mr. Ruffin, I don't know whether I asked you or not about where were they when they found this shirt there?

A. I wasn't with them when they went to the brush pile and got that over in the woods.

Q. With reverence to the weather that morning, state whether or not i was a frosty morning or what was the condition with re erence to the ground there that morning?

A. Well, it had rained. It was pretty cool that morning, and it had rained the day before, because these were the only tracks that went out of that driveway, you know, that were plain.

Q. With reference to that driveway and which way those tracks led, which way was it that this money and these other things were found? What direction was it from that?

A. Well, the coat and the clothes were found in a kind of, in a northeastward direction, and the money was found more in a northern direction.

Q. Did you mean northwest or northeast? What direction did you say there?

[fol. 210] A. Northwest is what I meant.

Recross-examination:

By Mr. Broadway:

Q. But Mr. Ruffin, you were not with them you say when they found these clothes and the lunch box and these other articles down back of Rock Hill?

A. No, I didn't go with them to get the clothes. We were busy on the Wilson trial and I didn't go.

Q. You don't know of your own knowledge where they were found?

A. I know the boy pointed out they were over in that hollow.

Q. But you were not with them when they found them?

A. I was not with them when they pulled them out of the tree trunk.

Q. Therefore, you don't know where they found them?

By Mr. Broadway: All right.

(Witness excused.)

[fol. 211] MARTIN GUNN, recalled for further

Direct examination.

By Mr. Lobrano:

Q. Mr. Gunn, with reference to where you traced these articles from Rock Hill, which direction did you find these clothes? In what direction were they found?

By Mr. Broadway: He has gone into that.

By Mr. Lobrano:

Q. Did you testify which way from the tracks?

A. No, I didn't.

Q. Well, which way were they?

A. I testified which direction from Rock Hill.

Q. Yes, sir.

A. They were a little north of west, from where the tracks were, in the same general direction that the tracks were moving.

Q. When you found this sweat shirt here, tell the jury whether or not there was any blood found on the sleeves of it?

A. There was on one of the sleeves. There is a patch of blood, right smart little bit.

Q. Is that on one of the sleeves? Can't tell right from left, can you?

A. Not on the sweatshirt. There it is, right there, see?

By Mr. Lobrano: That's all.

By Mr. Broadway: I think that's all.

(Witness excused.)

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[fol. 212] A. B. RUFFIN, recalled for further

Cross-examination.

By Mr. Broadway:

Q. Mr. Ruffin, at my instance, have you made a rough diagram of that building out there, and more particularly with reference to the room to which the front door enters,

and wherein is the counter, and where was found the body of this man?

A. Yes, sir.

Q. Mr. Ruffin, will you come down here please, sir, and stand up in front of the jury there, so you can indicate those places. First, what is the approximate measurement of the building, length and width, or width and length?

A. Now what I say will be nearly guess on the dimensions of that building.

Q. Your best judgment?

A. About forty feet this way, sixty this way, I imagine.

Q. The building faces which way?

A. Faces east, which is 45 Highway.

Q. 45 Highway runs right in front of it, and how close to the front door, about?

A. I would say the front door is of 100 feet of the pavement, edge of the pavement.

Q. Of the edge of the pavement, the highway?

A. Yes.

Q. Now then point out there the front door that enters the room?

A. This is the front door right here.

[fol. 213] Q. That door then, it is near the center of the front wall of that wall, isn't it? Somewhere near the center of the front wall of that room?

A. That is of the northeast room of that building.

Q. That is the one I am talking about?

A. It is cut up in partitions.

Q. What is this line you have indicated here? This heavy line you have marked with a pencil there?

A. That is the counter.

Q. And this right here, what does that indicate?

A. That indicates the ice box. That is built partly underneath the counter and extending out in the building away from the counter.

Q. And back towards the north wall of the building?

A. That's right.

Q. And directly opposite that on the other side and next to the wall, what is that?

A. It is a table or shelf built that the cash register sits on, and cigarettes and matches and cakes and candies, or anything they might carry there.

Q. Then those two, the ice box and that table that you have just referred to, are directly opposite each other?

A. They are.

Q. And there is a rather narrow space there between the counters?

A. I imagine between two and a half and three feet space between those two.

[fol. 214] Q. Now point out on the exhibit there where the man's body was found?

A. In this corner right here, the dead man right here, his head underneath this counter, feet towards the heater.

Q. That "X" mark you made to indicate the heater?

A. This is the heater. The dead man was right in this position with his head pointing to the northeast corner, right under that counter.

Q. And his feet pointing toward the stove?

A. Yes, sir.

Q. Now where was the disarrangement of bottles and pieces of coal and things of that kind there behind the counter?

A. In this space here, between the ice box and this cabinet that is built over here, or table, and all around in this space around the stove, and then this open space here.

Q. Between both of them, the ice box and the counter, or show case, up until the end of the counter looking towards the east is where that was found?

A. That's right.

Q. Now then the west end of the ice box and the table, this direction, was any of that found, any of that disordered arrangement of soft drink cases and pieces of coal, or anything else?

A. Not much. Not as much as there was up this other way. I don't remember how much there was back there, but there was a disarrangement all in this space here.

Q. And you think, Mr. Ruffin, there was some in here, that space west?

[fol. 215] A. End of the ice box, I don't think so. I didn't find any sign there.

By Mr. Broadway: That is all in reference to that. Now we offer that in evidence, with the explanation of it that the witness has made to the jury.

By the Court: All right, since there is no objection, let it be admitted in evidence.

(Sketch introduced in evidence as Exhibit A to the cross examination of the Witness A. B. Ruffin, and is sent to the Supreme Court and made a part of this record.)

By Mr. Broadway:

Q. Mr. Ruffin, was there a coal scuttle or coal container behind the counter?

A. I think there was a coal scuttle or bucket with some coal in it.

Q. Can you tell me how many pieces of coal you found laying around on the floor back there?

A. No, sir, I couldn't.

Q. Some several pieces though?

A. There was some coal, yes, sir.

Q. On the floor, in this disorder you spoke of, that right?

A. Yes.

Q. Were any of those pieces picked up and kept by any of you officers, any of those pieces of coal?

A. There was one piece of coal had a good bit of blood on it.

[fol. 216] Q. Was that preserved by you officers?

A. I think we brought that piece of coal in, but we never got anything on it. I don't think that piece of coal—we didn't keep it.

Q. You didn't keep it?

A. No.

Q. You think it had some blood on it?

A. Had a lot of blood on it.

Q. Can you indicate, Mr. Ruffin, by your hands there the approximate sixe of that piece of coal, or in any way tell us the approximate diameter of it, if you prefer?

A. It was about four inches thick and about six inches long, I believe this lump of coal was.

Q. About four inches thick and about six inches long?

A. Kind of an oblong shape.

Q. Did it appear any edges or parts of it broken off by reason of handling or anything of that kind?

A. No, sir.

By Mr. Broadway: I believe that's all.

Redirect examination.

By Mr. Lobrano:

Q. Mr. Ruffin, taking this diagram, show me where you found this hat, this hat that has been identified as the hat of Eddie Patton?

A. It was just against the counter, underneath this ice box. The ice box don't go all the way to the floor. There

[fol. 217] is a space of about six or eight inches underneath this ice box, and it was under there, up next to the outside wall of this counter.

Q. Where did you find this hammer, Mr. Ruffin, with reference to the drawing there?

A. It was under the counter, just opposite the stove, up on the shelf built in in this round part of the counter.

Q. Was it on the floor?

A. No, sir; it was on the shelf.

Q. Mr. Ruffin, one question I probably should have asked you in chief with reference to the clothes the defendant had on the morning that he was arrested, state whether or not those clothes were fresh pressed or freshly cleaned, or whether they appeared to be that way, or just what their condition was?

A. Well, they were fresh, fresh cleaned and pressed.

Q. I am going to ask you one other question about them. Did he tell you what he had done with the clothes he had worn prior to the clothes he had worn that morning?

By Mr. Broadway: We object to that if the Court please.

By the Court: Overruled.

By Mr. Broadway: May I state my reasons?

By the Court: Yes, sir.

By Mr. Broadway: The reasons are the same that were made to previous questions with regard to the clothing and other articles.

By Mr. Lobrano: I am going to show later on, connect it up.

By the Court: Overrule the objection.

[fol. 218] A. He told me when we told him about his fresh clothes, he had just changed clothes; that he had just gone by Newton Cleaners and left the bloody clothes he had on, and put on clean clothes.

By Mr. Broadway: We object to that as not being responsive to the question.

By Mr. Lobrano: Let that go out and ask the jury to disregard that last answer.

By the Court: Gentlemen, I instruct you to disregard that last question and answer.

By Mr. Lobrano:

Q. State whether or not he told you he had left the clothes he had been wearing, before he changed them, and the

clothes he had worn that morning when he went out to Mr. Meadors, that he left them at Newton Cleaners?

A. He did.

Q. State whether or not after that the officers went down to Newton Cleaners and got them?

A. They did.

Q. But you didn't go?

A. I didn't go. Sent Mr. Gunn and Mr. Danner.

By Mr. Lobrano: That's all.

By Mr. Broadway: Now we object and move to exclude the answer of the witness with reference to the clothes he had on that morning when he went to Mr. Meadors place for the reason that if he stated he went to the place, it would [fol. 219] be in the nature of admission against interest and the circumstances under which that admission is not shown so that the Court can find or be authorized to find its voluntary nature and character.

By the Court: Overrule your objection.

(Witness excused.)

[fol. 220] (At this point, the Jury retire from the hearing of the Court, and the following proceedings were had in the absence of and out of the presence of the Jury:)

DEFENDANT'S MOTIONS TO EXCLUDE CERTAIN EVIDENCE

By Mr. Broadway: Comes now the defendant and moves the Court to exclude the evidence of the Witness Ruffin as touching the comparison of the shoes taken from the defendant with tracks found at and near Rock Hill for the reason that from Mr. Ruffin's testimony, it appears that the defendant was ordered to remove his shoes by the officers; and that such removal of his shoes was obviously without the consent and approval and against his will; and that the making thereafter of any comparison as between those shoes and tracks found near Rock Hill and evidence in regard thereto would be tantamount to and is in fact and in law compelling the defendant or forcing the defendant to give evidence against himself in violation of his constitutional rights, guaranteed to him by Section 26 of the State Constitution and also, in denial of due process guaranteed to him by the Fourteenth Amendment of the Federal Constitution.

The same motion was made with reference to the evidence

of the witness in regard to heel prints, the comparison of the shoes taken from the defendant's feet, with reference to that, and for the same reasons.

That is all of that motion, your Honor.

By the Court: I overrule your motion.

[fol. 221] By Mr. Broadway: Comes now the defendant and moves to exclude all the evidence with regard to the defendant being carried to the scene near Rock Hill, and there pointing out certain articles of clothing and other articles testified about that were found there. And also, the defendant moves the court to exclude the evidence touching defendant's pointing out the spot where the money was found; and as grounds for the exclusion of this evidence, defendant would show that his agreeing to point out the clothing and the money and his actual doing so as testified about, is in the nature of admissions against his own interest and in the nature of a confession, which is not shown to be, by the evidence in the record, free and voluntary to the extent required by law.

And further, the defendant shows that to admit such evidence without such showing is a denial of his rights in that it is tantamount to and is in fact and in law compelling him to give evidence against himself.

By the Court: Overrule the motion.

By Mr. Broadway: In order that I may not overlook anything, I am going to make this general motion.

Now comes the defendant and moves the Court to exclude any and all statements against interest, or statements in the nature of a confession that may have been introduced by the State, and says that any and all such that may be now in the record were admitted against this defendant's objection without a preliminary inquiry into the competency [fol. 222] of such statements, except with reference to the clothing that was found back of Rock Hill, this being the only preliminary inquiry conducted by the Court, and the overruling of this defendant's motion, as well as objection, the motion being to conduct the prelminary inquiry in the absence of the Jury, in each instance, where such statements were admitted into the record.

By the Court: Overrule that motion.

DEFENDANT'S MOTION TO EXCLUDE ALL OF STATE'S EVIDENCE, AND FOR A DIRECTED VERDICT

By Mr. Broadway: Comes now the defendant and moves the Court to exclude all the evidence offered on behalf of the State, and to direct the Jury to return a verdict of not guilty.

By the Court: Overrule that motion.

(At this point, the Jury return into open Court, and the following proceedings were had in the presence of the Jury:)

By Mr. Broadway: The defendant rests, if the Court please.

*Defendant rests.*

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[fol. 223] IN CIRCUIT COURT OF LAUDERDALE COUNTY

[Title omitted]

VERDICT AND JUDGMENT—March 2, 1946

This cause this day coming on for further hearing, came the district attorney, who prosecutes for the State of Mississippi, and came also the defendant in his own proper person and by counsel, who having been duly arraigned in open Court and in the presence of his counsel, on a former day of this term of Court, and having then and there entered a plea of "Not Guilty" to a charge of Murder, the same being and indictment preferred by the Grand Jury at this term of Court, the defendant then and there threw himself upon the country and the District Attorney did the like.

Whereupon the defendant was tried before a jury of good and lawful men duly sworn, impaneled charged and instructed; and especially sworn to try the issue as provided by law in capital cases, composed of George L. Hussey, F. A. Rawson, J. A. Davis, H. S. Wedgeworth, C. B. Brown, H. R. McDaniel, D. L. Harper, I. S. Pigford, Nate S. Byrd, H. G. Banes, C. B. Little, A. N. Bunyard, who having heard all of the trstimony, the arguments of counsel, and having [fol. 224] received the instructions of the Court, retired to consider their verdict, when presently they returned into open court the following verdict, to-wit:

"We, the jury find the defendant guilty as charged in the Indictment,",

whereupon in open Court and in the presence of the defendant and in the presence of the attorney for the defendant; the Court then and there asked each of the jurors, if this was his verdict, and each juror for himself answered, "it was his verdict."

The defendant was this day called before the bar of thid court, and after having been asked if he had any reason why sentence should not be passed upon him at this time, to which he replied to the negative.

Therefore the Judge of this Court then and there passed sentence upon the said defendant, Eddie Buster Patton in open Court.

The said defendant, Eddie Buster Patton, is hereby sentenced to death by being electrocuted by electricity passing through his body until dead, sentence is hereby set for execution on April 12th, 1946, same being the date this day set by the Court for the execution of the defendant in the jail of Lauderdale County, Mississippi as provided by law, for which let proper process and writ issue according to law.

Jesse H. Graham, Circuit Judge.

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P 542-
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[fol. 225] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

#36298

EDDIE (BUSTER) PATTON, Appellant,

vs.

STATE OF MISSISSIPPI, Appellee

ASSIGNMENT OF ERRORS—Filed September 13, 1946

Comes now Eddie (Buster) Patton, appellant, by his attorney, L. J. Broadway, and assigns as error the action of the lower court in the particulars following, towit:

1. The lower court erred in overruling appellant's motion to quash the indictment against him on the ground of sys-

tematic exclusion of qualified negroes from jury service, and in so ruling denied to the appellant his rights of due process of law and equal protection of the laws granted him by the state constitution and the 14th amendment to the constitution of the United States.

2. The lower court erred in overruling appellant's motion for a change of venue.

3. The lower court erred in overruling appellant's motion to quash the special venire, and in so ruling denied the appellant his rights to due process of law and the equal protection of the laws granted him by the constitution of the state of Mississippi and the 14th amendment to the constitution of the United States.

4. The trial judge erred in not recusing himself on motion of the appellant presented for that purpose.

5. The lower court erred in admitting evidence offered by the state over the objections of the appellant as shown by the record, and also in refusing to conduct preliminary examinations into the competency and admissibility of evidence in the nature of confessions and admissions against interest, and in allowing such evidence to go to the jury over appellant's objections as shown by the record, and in so ruling in each of the said instances denied to this appellant rights granted him both under the constitution of the state of Mississippi and under the 14th amendment to the [fol. 226] constitution of the United States, and particularly his rights against being compelled to give evidence against himself, and to security against unreasonable searches and seizures, and to due process and the equal protection of the laws.

6. The lower court erred in granting the instructions for the state.

7. The lower court erred in denying the appellant's motion for a directed verdict made at the conclusion of all the evidence.

8. The lower court erred in overruling the several motions made by appellant at the close of all the evidence.

9. The lower court erred in overruling appellant's motion for a new trial.

Respectfully submitted, L. J. Broadway, Attorney for Appellant.

STATE OF MISSISSIPPI,
Lauderdale County.

I, L. J. Broadway, attorney of record for Eddie (Buster) Patton, appellant in the foregoing numbered and entitled cause, do hereby certify that I have this day mailed, postage fully prepaid, a true and exact copy of the foregoing assignment of errors to Hon. Greek L. Rice, Attorney General of the State of Mississippi at his office at Jackson, Mississippi.

L. J. Broadway, Attorney for Appellant.

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[fol. 227] IN THE SUPREME COURT OF MISSISSIPPI

No. 36,298

In Banc: 15951

EDDIE PATTON

vs.

STATE

Griffith, J.

OPINION—Filed February 10, 1947

Appellant, an adult young negro, was indicted, convicted, and sentenced to death for the murder of J. L. Meadows, a middle aged white man, the homicide having been in the furtherance of robbery.

In due time appellant made a motion to quash the indictment because no negro was on the grand jury panel, although there were qualified negro men in the county.

It has long been settled in this country that an intentional and arbitrarily systematic exclusion of negroes from grand and petit jury lists solely because of their race and color denies the equal protection of the laws to a negro charged with crime, so that at this time no parade of the authorities is necessary on that point.

There is no question raised here, nor could there be, that the jury laws in this state require that jurors shall be qualified electors and must be men, not women, and that a large [fol. 228] number of persons are exempt from jury service, including, among others, physicians, ministers, and teachers.

This preliminary statement sends us at once to the facts, so far as shown by the record, as to which it must first be observed that the finding of facts by the circuit judge is to be accepted as true if supported by testimony and is not against the great weight of the dependable evidence. Some few witnesses were introduced who made conjectural estimates or guesses, admitted by them to be such, which may, therefore, be laid aside. There was one, however, who had made, in 1944, a search of the records as to the qualified electors in the county, and made it carefully because to be used in a lawsuit over the matter of excluding the sale of beer in the county. His search revealed that there were more than 12,000 qualified electors in the county, of whom between 30 and 60 were colored, and of the latter the majority were teachers or preachers, exempt from jury service. The only other witness who had made a check of the records was the county judge. He made such a check in 1942. His conclusion from his check was that there were about 11,000 qualified electors in the county and of these the negro electors were less than 100, not specifying how many less.

The next witness, high in the order of dependability, is the circuit clerk, and this because he is the officer whose duties bring him nearest into intimate and daily contact with these records. He was questioned about District 1, in which the City of Meridian is located, and he said there were not over 50 colored electors in that district, of whom half were women. He was not questioned particularly as to those outside District 1. Next to the clerk in the posses-
[fol. 229] sion of accuracy would be the sheriff who must from time to time go over these records, and his estimate of the number of negro electors in the county was from 40 to 50, and nearly all these from District 1.

As to the negro electors outside District 1, the members of the Board of Supervisors from those districts were called as witnesses and they testified particularly as to those districts. Their testimony showed that there were no negro electors in Districts in 2 and 4; only one in District 3, and he a medical doctor exempt from jury service, and in District 5, four or five negro electors, and as to them no showing whatever was made whether they were teachers, or ministers of physicians, or whether or not otherwise execmpt f. om jury service.

From the above summary it is to be seen that the trial judge was sufficiently supported, and therefore justified,

in finding that there were not over 50 qualified negro electors in the county, of whom, according to the testimony of the clerk, not disputed in this particular, one half were women, which would leave 25 qualified negro male electors. He was justified also in accepting the testimony, not seriously disputed, that at least half the negro electors, men and women, were teachers or ministers or physicians, or were otherwise exempt from jury service. Of the 25 qualified negro male electors there would be left, therefore, as those not exempt, 12 or 13 available male negro electors as compared with 5,500 to 6,000 male white electors as to whom, after deducting 500 to 1,000 exempt, would leave a proportion of 5,000 nonexempt white jurors to 12 or 13 nonexempt negro jurors, or about one-fourth of one per cent negro jurors,—400 to 1.

It is undisputed that approximately 1,200 names of jurors had been put on the jury lists by the board [fol. 230] of supervisors between May 9, 1945 and the time of this trial in February 1946. Applying to the 1,200 jurors the proportion of four hundred whites to one negro, as above mentioned, it could be said that among the 1,200 there ought to have been three negroes, assuming for the purpose of this case that all other considerations were equal, and the proof is undisputed that within that time two or three negroes were put in those lists; and inasmuch as the movant had the burden of proof, this means that there were three negro jurors in the lists, wherefore to have put in more would have been to discriminate not against negro jurors but in their favor.

This is no such case, therefore, as was Smith v. Texas, 85 L. Ed. (U.S.) 84, where there were as many as ten percent of qualified negro jurors and where less than one percent had ever been listed as jurors in such manner that they would be called, including the year in question. Nor is the fact that no negro had actually served in the county where we are now considering, within the year above mentioned, any controlling evidence, there being no proof whatever as to why the three mentioned did not serve. Whether they failed to appear or whether they presented excuses and were released by the trial judge, or whatever else the reason, the record is wholly silent. In the absence of such proof we must assume that, so far as the officers or others in authority were concerned, the absence of the negroes from actual service was upon legitimate grounds, and not

otherwise. We know, as all know, that white men, in large numbers, although qualified electors, strive to avoid the burdens and distractions of jury service and resort to every available device and excuse to evade it. Even more [fol. 231] so can we be certain that the few negro jurors in a county such as this when called would be moved by the same desire and purpose to get excused.

We have not gone back of the year of and immediately preceding this trial, as to the jury lists, for the evident reason that in that respect we are concerned with that which bears real relation to the instant case and therefore with the present and that which was in the immediate parts,—not with what may have happened in remote days. And in following out the mathematical calculations per capita among the nonexempt qualified persons, we are not to be considered as having resorted to it as an exclusion method for the solution of the question with which we have above dealt. Upon such a broad issue other considerations are to have their proper bearing. We have proceeded as we have here, because that method is sufficient for the present case.

The trial judge overruled the motion to quash, and in this, as we have already indicated, the evidence was sufficient to sustain his action. Thereupon appellant moved for a change of venue, which was denied by the trial judge, and upon this issue, too, he is sustained by the evidence, or at least we cannot say he was manifestly wrong.

Appellant then moved for a special venire and that the venire be drawn from the jury box, but it appearing that the jury box had been refilled within thirty days of the motion, the court ordered the sheriff to summon a venire of one hundred jurors from the county at large, and of this appellant complains. The Court was correct under Moon v. State, 176 Miss. 72, which we now reaffirm. Appellant complains also that no negro was summoned by the [fol. 232] sheriff on this special venire: There is not a word of testimony that the sheriff deliberately excluded negroes from this venire or that he had any such thought or purpose. For the reasons already heretofore stated there was only a chance of 1 in 400 that a negro would appear on such a venire and as this venire was of one hundred jurors, the sheriff, had be brought in a negro, would have had to discriminate against white jurors, not against negroes,—he could not be expected to bring in one-fourth of one negro.

Two other complaints about the special venire are made, but these are plainly not maintainable and are therefore not further discussed.

On the merits an outline of the facts is:—The crime was committed on Monday, February 11, 1946, in a small store operated by the deceased, as an adjunct to a small roadside night club, located about four miles south of Meridian, on Highway 45. The deceased left his home, not far from the store, about 6 o'clock a. m. and was found in the store between 10 and 11 o'clock a. m. When found he was cold in death. On his body, and particularly about his head, were fifty-four wounds, and there were several additional but smaller wounds. No third person witnessed the crime, but near the body a hat was found and this hat was immediately identified as one given not long before to appellant by deceased and which appellant, at that time, had worn away. The officers promptly arrived and found tracks plainly made, as by some person in haste, leading away from the store towards the woods to the west, and casts were immediately made of these. The hat which was found near the body pointed, of course, towards appellant, who had been a helper around the store until about two weeks before, and he was arrested in the early afternoon [fol. 233] of the day of the crime. When he reached the jail his shoes were taken from him and they fit the casts. The shoes and the casts were placed before the jury for comparisons to be made by the jurors themselves.

Among the articles missing from the store was a lunch box, bearing the initials of the deceased. This box was used by deceased as a cash box. Missing also was a billfold, a fountain pen, and the hat of the deceased. A coat which had been hanging inside by the store door was missing. On being questioned at the jail, appellant stated that he could point out to the officers where he had hidden these several articles in the woods. He thereupon went with the officers into the hilly woods, about half a mile from the scene of the crime, and pointed out to them where he had concealed the articles and they were there found. The officers had no previous information of these places. The witness, Ruffin, was present when part of them were found, and the witness, Gunn, was present when the remainder were uncovered, appellant being present and pointing out on both occasions. In the lunch box found wrapped up in the coat were the billfold, the fountain pen but no money except one

dollar. At a separate place pointed out by appellant, there was found $301.85 buried in the ground by a large pine tree. The locations were in the general direction towards which the tracks, already mentioned, led.

There was other competent evidence, the details of which are not pursued for the reason that what has been recited was ample to sustain the conviction.

Appellant complains that by the taking of his shoes and thereupon comparing them with the casts, he was in effect forced to give testimony against himself in violation of constitutional guaranties. It is not necessary, on this [fol. 234] issue to do more than to quote from Cody v. State, 167 Miss. 150, 165, which we now reaffirm: "It is argued that it was error to introduce the footwear which had been compared with the tracks leading from the Jim Parrish home and which footwear had been taken from the defendant. It must be remembered that this footwear was taken after the defendant had been arrested. In our view, there could be no question of the lawfulness of the arrest, and it is permissible for the officer making the arrest to take from the defendant such things as tend to show the commission of the crime for which he was arrested. There was no protest made at the time the officers took these things. • • • But even if there had been vigorous objections, it would not have been available. The officers had a right to take from him such things while under arrest."

It is complained that the statements by appellant about where the articles above mentioned could be found, and the evidence that he accompanied the officers and pointed out where they were hidden, were erroneously received without a preliminary showing that the statements were voluntarily made and that his conduct in pointing out the hiding places was entirely voluntary on his part. There was no attempt here to use any confession in its entirety, or any part thereof save such as had definite relation to the articles mentioned and to the pointing out of the places where appellant admitted he had concealed them, and as to this no more is necessary than to quote from Warren v. State, 174 Miss. 63, 69, wherein it was said: "Although a confession not voluntary may not be received in its entirety, nevertheless such particular parts of it as definitely direct to the place or places where property or other evidence may be found is admissible, when and if in pur-

suance thereof the property or evidence is accordingly afterwards found."

[fol. 235] We have carefully examined the other alleged errors, and are of the opinion that none of them is sufficient to require a reversal.

Affirmed, and Friday, April 4, 1947, is fixed as to the date for the execution.

[File endorsement omitted.]

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[fol. 236] IN THE SUPREME COURT OF MISSISSIPPI

In Banc

36298

EDDIE (BUSTER) PATTON

vs.

STATE

JUDGMENT—February 10, 1947

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Lauderdale County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 28th day of February 1946, be and the same is hereby affirmed. It is further ordered and adjudged that the apellant, Eddie (Buster) Patton for such his crime of murder be safely kept in the County Jail of Lauderdale County until Friday, April 4th, 1947 and on that date within the County Jail of said County or at such other convenient place as the Board of Supervisors may designate, he, the said Eddie (Buster) Patton, be by the duly and legally constituted person or persons for such purpose, electrocuted, in the manner and form as prescribed by law, by causing to be passed through the body of the said Eddie (Buster) Patton a current or currents of electricity of such sufficient intensity and so continuing until he is dead, dead. It is further ordered and adjudged that the County of Lauderdale do pay the costs of this appeal to be taxed, etc.

[fols. 237-248] IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER OVERRULING SUGGESTION OF ERROR—March 17, 1947

This cause this day came on to be heard on the suggestion of error filed herein and this court having sufficiently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said suggestion of error be and the same is hereby overruled.

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[fol. 249] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—June 23, 1947

On consideration of the motion for leave to proceed further herein *in forma pauperis*,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

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[fol. 250] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 23, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of Mississippi is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: In forma pauperis: File No. 52,340, Mississippi, Supreme Court, Term No. 122. Eddie (Buster) Patton, Petitioner, vs. State of Mississippi. Petition for a writ of certiorari and exhibit thereto. Filed June 12, 1947. Term No. 122, O. T. 1947.

FILE COPY



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

Petition not printed

# No. 122

EDDIE (BUSTER) PATTON,

*Petitioner,*

*vs.*

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

## BRIEF FOR PETITIONER

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# No. 122

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## BRIEF FOR PETITIONER

### Opinion of Court Below

The opinion has not been reported officially. It is reported in 29 So. (2d) 96 and appears at pages 227-235 of the record. Suggestion of Error (Petition for Rehearing) was overruled by the Supreme Court of Mississippi on the 17th day of March, 1947 (R. 153), without opinion.

### Jurisdiction

The date of the judgment in the Circuit Court of Lauderdale County, Mississippi, is March 2, 1946. This judgment was affirmed by the Supreme Court of Mississippi on Feb-

ruary 10, 1947. Suggestion of Error was overruled on March 17, 1947.

Certiorari to review the judgment of the Supreme Court of the State of Mississippi affirming the conviction was granted by this Court on June 23, 1947 (R. 153) upon a petition therefor filed on June 12, 1947, and based upon Section 237(b) of the Judicial Code (28 U. S. C. 344(b)).

## Statement of Case

Petitioner, a young ignorant Negro, was indicted on the 18th day of February, 1946, by the grand jury of Lauderdale County, Mississippi, for the alleged murder of one Jim Meadows, a white man fifty-three years of age. His trial in the Circuit Court of Lauderdale County was begun on February 28, 1946, and concluded the same day. He was sentenced on March 2, 1946, to suffer death by electrocution.

Prior to the trial on the merits, petitioner moved to quash the indictment upon the grounds that Negroes in Lauderdale County were systematically excluded from service on the jury solely because of their race or color (R. 1). That motion was denied (R. 2). During the trial, objection was made by petitioner to the introduction into evidence of statements and confessions obtained from petitioner by officers through the use of force, threats and intimidation (R. 142). The court overruled the objections (R. 142). An appeal was taken to the Supreme Court of Mississippi. After affirmation by the court (R. 152), Suggestion of Error was filed (R. 144) and overruled (R. 153).

The material facts concerning the exclusion of Negroes from jury service and the method of obtaining the confession are discussed in the argument herein.

## Errors Relied Upon

### I

**The Supreme Court of Mississippi erred in denying petitioner the equal protection of the laws and due process of law guaranteed by the Fourteenth Amendment by affirming the conviction of a Negro by a jury of white persons upon an indictment found and returned by a grand jury of white persons, from both of which said juries all qualified Negroes have for a long period of years been systematically excluded solely on account of race or color pursuant to established practices. . .**

A. PETITIONER WAS INDICTED AND CONVICTED BY GRAND AND PETIT JURIES IN THE CIRCUIT COURT OF LAUDERDALE COUNTY IN WHICH COURT AT THE TIME OF THIS TRIAL AND FOR A LONG PERIOD OF YEARS PRIOR THERETO NEGROES HAVE BEEN SYSTEMATICALLY EXCLUDED FROM JURY SERVICE SOLELY BECAUSE OF RACE OR COLOR WITHIN THE MEANING OF THE DECISIONS OF THIS COURT.

(1) The Record in this Case Clearly Establishes the Systematic Exclusion of Qualified Negroes from Jury Service in Lauderdale County, Mississippi, Solely Because of Race and Color.

(2) In Affirming the Conviction of Petitioner Herein The Supreme Court of Mississippi Erred in Refusing to Consider Evidence of Systematic Exclusion of Negroes from Jury Service in that County Prior to the Year of the Instant Case.

II

**The conviction of petitioner upon confessions and statements extorted by force, duress and intimidation obtained by officers and agents of the State of Mississippi while acting in their official capacity is a denial of the equal protection and due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.**

## ARGUMENT

### I

**The Supreme Court of Mississippi erred in denying petitioner the equal protection of the laws and due process of law guaranteed by the Fourteenth Amendment by affirming the conviction of a Negro by a jury of white persons upon an indictment found and returned by a grand jury of white persons, from both of which said juries all qualified Negroes have for a long period of years been systematically excluded solely on account of race or color pursuant to established practices.**

It is well settled that whenever by an action of a State all persons of a particular race are excluded solely because of their race or color from service as jurors in a criminal prosecution of a person of that race the equal protection of the laws is denied to him, and he is deprived of due process of law contrary to the Fourteenth Amendment of the United States Constitution. This principle applies whether the action is by virtue of a statute [1] or by the action of adminis-

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[1] *Bush* v. *Kentucky*, 107 U. S. 110, 122; *Strauder* v. *West Virginia*, 100 U. S. 303, 309.

trative officers[2] and whether the exclusion is from service on petit juries[3] or grand juries.[4]

The Mississippi Supreme Court, while admitting that this principle is well settled,[5] refused to apply it to the facts of this case, and by reason of such failure denied petitioner his constitutional rights.

A. PETITIONER WAS INDICTED AND CONVICTED BY GRAND AND PETIT JURIES IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, MISSISSIPPI, IN WHICH COURT AT THE TIME OF THIS TRIAL AND FOR A LONG PERIOD OF YEARS PRIOR THERETO NEGROES HAVE BEEN SYSTEMATICALLY EXCLUDED FROM JURY SERVICE SOLELY BECAUSE OF RACE OR COLOR WITHIN THE MEANING OF THE DECISIONS OF THIS COURT.

While the Mississippi statutes relative to juries and jurors[6] do not in terms provide for the exclusion of Negroes, the evidence discloses an exclusion and resultant discrimination by administrative officers as uniform and effective as if required by statute.

(1) The Record in This Case Clearly Establishes the Systematic Exclusion of Qualified Negroes from Jury Service in Lauderdale County Solely Because of Race and Color.

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[2] *Rogers* v. *Alabama*, 192 U. S. 226, 229; *Carter* v. *Texas*, 177 U. S. 442.

[3] *Norris* v. *Alabama*, 294 U. S. 587; *Strauder* v. *West Virginia*, *supra*.

[4] *Carter* v. *Texas*, *supra*, at page 444; *Patterson* v. *Alabama*, 294 U. S. 600.

[5] "It has long been settled in this country that an intentional and arbitrarily systematic exclusion of Negroes from grand and petit jury lists solely because of their race and color denies the equal protection of the laws to a Negro charged with crime, so that at this time no parade of the authorities is necessary on that point" (R. 146).

[6] Mississippi Code (1942), sections 1762-1772.

The Mississippi Supreme Court in affirming the judgment of the trial court held that the evidence was sufficient to sustain the action of the trial judge in overruling petitioner's motion to quash the indictment and his objection to the special venire on the grounds that Negroes were excluded from such juries. In a recent case involving this identical question this Court in a unanimous opinion by Mr. Justice Black recognized the responsibility of this Court to make an independent appraisal of the evidence as it relates to the petitioner's constitutional rights.[7]

In an opinion by Mr. Chief Justice Hughes, after stating the general principle set out above, it was pointed out that:

> "The question is of the application of this established principle to the facts disclosed by the record. That the question is one of fact does not relieve us of the duty to determine whether in truth a federal right has been denied. When a federal right has been specially set up and claimed in a state court, it is our province to inquire not merely whether it was denied in express terms but also whether it was denied in substance and effect. If this requires an examination of evidence, that examination must be made. Otherwise, review by this Court would fail of its purpose in safeguarding constitutional rights.[8]

Such an independent appraisal of the evidence herein will reveal that qualified Negroes were systematically excluded from jury service in Lauderdale County, Mississippi, because of race or color within the meaning of prior decisions of this Court. The testimony of fourteen witnesses, not sympathetic to either petitioner or members of his race, reveals that Negroes were systematically

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[7] *Smith* v. *Texas*, 311 U. S. 128 at p. 130.

[8] *Norris* v. *Alabama*, *supra*, at p. 589.

excluded from jury service in that county solely because of race or color.

B. M. Stephens, a former member of the Board of Supervisors of the county from 1924 through 1931, and Sheriff of the county from 1931 through 1935, testified that as supervisor it was his duty to help fill the jury boxes and during these years he had never known a Negro to "be on the jury, coming out of the jury box or going into it" and that during that time it was a matter of common knowledge that there were some Negroes qualified for jury service in the county (R. 3-6).

Mrs. Addie Rivers, a deputy circuit clerk for four (4) years and a clerical worker in the office of the Circuit Clerk for two (2) years prior thereto, testified that to her knowledge no Negro had served, been called on to serve or drawn on a jury, grand or petit, during that time; that in 1945, the Clerk did list eight (8) Negro qualified jurors for service in the local Federal District Court (R. 8). She further testified that no Negro was called or served on the grand jury for the term at which petitioner was indicted (R. 6-12).

C. C. Ferrill, Circuit Clerk, with over thirteen (13) years service in the Chancery Clerk's office, testified that he never knew of a Negro serving on the jury at any term of the Circuit Court or being drawn or summoned for such service. He further testified that it was his judgment that there were about twenty-five (25) qualified Negro jurors in Beat One, city of Meridian, which city is in Lauderdale County (R. 12-23).

Howard Cameron, Chancery Clerk since January, 1936, and deputy for such office since March, 1933, testified that in his judgment, there were eight thousand to ten thousand qualified electors in the county and that there were several hundred Negro registrants on the books of Lauderdale County (R. 25). He further testified that to his knowledge since 1933 there had never been any Negro empanelled for

nor any to serve on the grand or petit jury in the criminal courts of the county, and that there were no Negroes on the grand jury that indicted petitioner (R. 23-31).

W. Y. Brame, Sheriff since 1944 and tax assessor for the county for twelve years prior thereto, testified that there were no Negroes on the jury summoned for the February, 1946 term of court; that he knew of only one Negro having been summoned for jury duty during his connection with the county government, which individual did not report, and that he had found from time to time some forty (40) to fifty (50) Negro registrants on the books (R. 31-38).

Tom Johnson, member of the Board of Supervisors, testified that during his twenty-five (25) to thirty (30) years' service in such county, he had never listed any Negro jurors and had never tried to determine whether there were any qualified for such in his jurisdiction (R. 42-48). He testified: "Q. Mr. Johnson, in making up your jury list since you have been supervisor have you made any effort at any time to determine whether in the registration books for your beat there were registered Negroes with a view of listing them for jury service? A. I have never had that in mind, because we did not have any darkies of consequence in the beat, have not yet. I have enough troubles without going into all those details."

J. A. Riddell, Judge, Lauderdale County Court, and a practicing attorney in the county since 1916, and a resident in the county since 1911, testified that since 1916 no Negro had served upon the grand jury in the county and that no Negro had been called or qualified for such service during those years; that in his judgment there were about one hundred (100) Negro qualified electors (R. 48-54).

George Beeman, Superintendent of Education of the county for ten (10) years, testified that during those years no Negro had been impanelled or called to the jury box for the grand jury (R. 54-57).

Donovan Ready, a CPA, testified that a check of the number of qualified electors of the county in the years 1941 and 1942 showed that there were at least thirty (30) to sixty (60) Negro qualified electors, and that there might have been others whom he did not know (R. 57-60).

E. C. Gunn, a member of the Board of Supervisors for about six (6) years, testified that though there were four (4) or five (5) Negroes on the registration books of his District, he had not listed a Negro for jury duty during his term in office, and that to his knowledge not a single Negro had been called to the jury box with the view of being qualified for grand jury service, nor had any served on the grand jury during his term of office (R. 60-63).

L. D. Walker, member of the Board of Supervisors for seventeen (17) years, testified that to his knowledge no Negro had served on the grand jury or had been called to qualify for such during his period of service. He stated further that he did not know of an instance in the history of the county where a colored person had served upon the grand jury (R. 63-69).

O. L. King, member of the Board of Supervisors for seven years, stated that he did not know of having ever seen a Negro impanelled or called to the jury box during his period of service (R. 69-74).

William Wright, member of the Board of Supervisors for about nine (9) or ten (10) months, testified that no Negroes served on the February, 1946 grand jury, and that he knew that for fifteen (15) years no Negroes had served on the grand jury in that county, though there were some qualified Negro electors on the books (R. 74-80).

Frank Kennedy, former member of the Board of Supervisors from 1928 to 1932, testified that during his term of office he did not list the name of any Negro on the jury list though there were one or two that he knew of who were in every respect qualified, and that there might have been

more so qualified that he did not know. He stated further that to his knowledge no Negro had ever served on the grand jury (R. 80-84).

There was testimony to show that the ratio of Negroes to whites in the population of Lauderdale County was approximately sixty-five (65) to thirty-five (35) (R. 85) or fifty-fifty (R. 83).

In the face of this testimony, the Supreme Court of the State of Mississippi, in its opinion, concluded that the trial judge was justified "in finding that there were not over fifty qualified Negro electors in the county, of whom . . . one-half were women, which would leave twenty-five qualified Negro male electors. He was justified also in accepting the testimony . . . that at least half the Negro electors . . . were teachers or ministers or physicians, or otherwise exempt from jury service. Of the twenty-five qualified Negro male electors, there would be left . . . twelve or thirteen available male Negro electors . . . or about one-fourth of one per cent Negro jurors,—four hundred to one" (R. 148).

Continuing to apply the rule of an alleged percentage as to the special venire the Court held: "For the reasons already heretofore stated there was only a chance of 1 in 400 that a Negro would appear on such a venire and as this venire was of one hundred jurors, the sheriff, had he brought in a Negro, would have had to discriminate against white jurors, not against Negroes,—he could not be expected to bring in one-fourth of one Negro" (R. 149).

The opinion of the Supreme Court of Mississippi ignores most of the material testimony on the jury question and based its decision upon testimony of three of the fourteen witnesses called to the effect that there were an estimated eleven thousand qualified electors in the county and that there were less than one hundred, or as one witness testified

fifty qualified Negro electors in the county[9] half of whom were estimated to be ineligible because of sex or occupation (R. 147-149).

In examining Mrs. Addie Rivers, a Deputy Clerk, as to the contents of two poll tax books representing two divisions of one precinct there were found the names of at least eleven Negroes, which names indicated that they were men in every respect qualified to be listed on the jury rolls (R. 38-41). Howard Cameron, Chancery Clerk testified that:

> "Q. Mr. Cameron, could you and would you give the court the benefit of your very best judgment as to the number of names of members of the Negro race that now appear upon the registration books of Lauderdale County?

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[9] Code 1942, Section 1762, 1766, 1768, 1772.

Section 1762 provides who are competent jurors in the following language: "Every male citizen not under the age of twenty-one years, who is a qualified elector and able to read and write, has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years and who is not a common gambler or habitual drunkard, is a competent juror (both grand and petit); but no person who is or has been within twelve months the overseer of a public road or road contractor shall be competent to serve as a grand juror. . . ."

Section 1766, Code of Mississippi, 1942:

"The board of supervisors at the April meeting in each year or at a subsequent meeting is not done at the April meeting, shall select and make a list of persons to service as jurors in the circuit court for the twelve months beginning more than thirty days afterwards, and as a guide in making the list they shall use the registration book of voters, and shall select and list the names of qualified persons of good intelligence, sound judgment, and fair character, and shall take them as nearly as they conveniently can, from the several supervisor's districts in proportion to the number of qualified persons in each. . . . The clerk of the circuit court shall put the names from each supervisor's district in a separate box or compartment, kept for the purpose, which shall be locked and kept closed and sealed, except when juries are drawn, when the names shall be drawn from each box in regular order until a sufficient number is drawn. The board of supervisors shall cause the jury box to be emptied of all names therein, and the same to be refilled from the jury list as made by them at said meeting. If the jury box shall at any time be so exhausted of names as that a jury cannnot be drawn as provided by law, then the board of

"A. Frankly I have never given it any consideration, but I am under the opinion that there are *several hundred of them*" (R. 25).

A County Court Judge, J. A. Riddell, testified that in his judgment there were about one hundred Negro qualified electors in the county (R. 75-82) while, Donovan Ready, another witness, found as a result of a personal check of the rolls *in 1941 and 1942* from thirty to sixty Negro qualified electors *whom he personally knew.*

An independent examination of the evidence in this case will reveal:

(1) That for at least thirty years prior to the trial of petitioner, no Negro had been drawn, summoned or served on a Grand or Petit Jury in Lauderdale County.

(2) That at various times during these years there had been from twenty-five to several hundred qualified Negro electors who could have been properly listed, drawn or summoned for such service, and that the existence of such qualified Negro electors was common knowledge throughout the county.

(3) That the Clerk of the Circuit Court, at the request of the Federal Jury Commissioner, had, with little effort,

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supervisors may at any regular meeting make a new list of jurors in the manner herein provided. In order that the board of supervisors may properly perform the duties required of it by this section, it is hereby made the duty of the circuit clerk of the county and the registrar of the voters (also the clerk) to certify to the board of supervisors during the month of March of each year under the seal of his office the number of qualified electors in each of the several supervisor's districts in the county."

Section 1768, Mississippi Code 1942, provides that the list of names thus selected and made up be certified to the clerk of the circuit court, and carefully filed and preserved by him as a record of his office.

Section 1772 of the same code provides how grand and petit juries are drawn for terms of court.

furnished him with a list of at least eight such Negroes who were in every respect so qualified.

(4) That no Negroes served on the Grand Jury which found the indictment in the instant case, and that no Negroes served on the Petit Jury which convicted the petitioner.

The testimony establishing these facts was sufficient in itself to make out a *prima facie* case of the denial of the equal protection of the laws to petitioner. In *Norris* v. *Alabama, supra,* where similar evidence was introduced, the Court said:

> "We are of the opinion that the evidence required a different result from that reached in the state court. We think that the evidence that for a generation or longer no Negro had been called for service on any jury in Jackson County, that there were Negroes qualified for jury service, that according to the practice of the jury commission their names would normally appear on the preliminary list of male citizens of the requisite age but that no names of Negroes were placed on the jury roll, and the testimony with respect to the lack of appropriate consideration of the qualifications of Negroes, established the discrimination which the Constitution forbids." [10]

Once this *prima facie* case had been established by petitioner, it then became incumbent upon the State to prove by competent testimony that Negroes were not unconstitutionally excluded from jury service. This burden the State failed to sustain.[11]

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[10] 294 U. S. 587, 596.

[11] "We think that this evidence failed to rebut the strong prima facie case which defendant had made. That showing as to the long-continued exclusion of Negroes from jury service, and as to the many Negroes qualified for that service, could not be met by mere generalities. If, in the presence of such testimony as defendant adduced, the mere general asser-

2) In Affirming the Conviction of Petitioner Herein The Supreme Court of Mississippi Erred in Refusing to Consider Evidence of Systematic Exclusion of Negroes from Jury Service in That County Prior to the Year of the Instant Case.

The Supreme Court of Mississippi refused to consider the evidence of the systematic exclusion of Negroes from jury service over a long period of years prior to the year immediately preceding the trial:

> "We have not gone back of the year of and immediately preceding this trial, as to the jury lists, for the evident reason that in that respect we are concerned with that which bears real relation to the instant case and therefore with the present and that which was in the immediate parts,—not with what may have happened in remote days. And in following out the mathematical calculations per capita among the nonexempt qualified persons, we are not to be considered as having resorted to it as an exclusion method for the solution of the question with which we have above dealt. Upon such a broad issue other considerations are to have their proper bearing. We have proceeded as we have here, because that method is sufficient for the present case" (R. 149).

Prior decisions of this Court have clearly established the principle that testimony of the exclusion of Negroes from jury service in former years is competent evidence of unconstitutional discrimination in the selection of jurors and is entitled to great weight.[12]

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tions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of Negroes from jury service, the constitutional provision—adopted with special reference to their protection—would be but a vain and illusory requirement."—*Norris* v. *Alabama, supra,* at p. 598.

[12] *Norris* v. *Alabama, supra; Neal* v. *Delaware,* 103 U. S. 370. See also: 82 L. Ed. 1070, 1072.

Under the laws of the State of Mississippi, in addition to requiring as a prerequisite for being eligible for jury service, that one be "a qualified elector,"[13] it is also required that the registration book of voters shall be used "as a guide in making the list" of potential jurors. The code further provides that the list of prospective jurors shall be certified to the Clerk of the Circuit Court, filed and preserved by him.[14]

Testimony presented before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946-79th Congress at hearings held in Jackson, Mississippi on the 2d, 3d, 4th and 5th days of December, 1946, showed a state-wide condition of intimidation by State officers of large blocks of Negroes who attempted to register and to vote in a recent primary held in that State.[15]

In 1946, Mississippi passed a law exempting veterans from payment of poll taxes under certain conditions.[16] A great movement of Negro veterans took place all over the State to register to vote. There were 66,972 discharged Negro veterans in Mississippi and practically 100% of them could read and write.[17]

The Supreme Court of Mississippi in a futile effort to distinguish this case from *Smith* v. *Texas, supra,* pointed out that in the *Smith* case ten percent of the qualified jurors were Negroes and that in the instant case the ratio was less than one percent. In doing this the Court not only ignored the evidence of witnesses that there were "hun-

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[13] Mississippi Code, 1942, Section 1762.

[14] Mississippi Code, 1942, Section 1768.

[15] See Minutes of Special Committee to investigate Senatorial Campaign Expenditures, 1946, Senate of the United States, 79th Congress; In the Matter of the Investigation of the Mississippi Democratic Primary Campaign of Senator Theodore G. Bilbo, Senator, State of Mississippi, pp. 22, 98, 137, 146-147, 267, 134, 139, 619, 608, 365, 395, 731, 754, 813.

[16] General Laws of Mississippi—1946, Chap. 441, App. April 10, 1946.

[17] See Minutes, footnote 15, pages 491-493.

dreds" of Negroes qualified for jury service but also ignored the reasons for there being only "hundreds" of Negro registered voters. The State of Mississippi acting through its officers not only excluded Negroes from jury service by refusing to call qualified Negroes, but also effectively excluded Negroes by preventing them from qualifying under the laws of Mississippi by means of force, intimidation and duress in violation of the United States Constitution.

Accordingly, many hundreds of Negroes whose names should legitimately appear upon the registration rolls in the custody of the Circuit Clerk of Lauderdale County, which rolls by law were to be used as a guide in selecting and making a list of potential jurors[18] were unlawfully denied the opportunity to have their names entered thereon.

There can be no clearer indication of the atmosphere in which the juries of Lauderdale County are selected and in which petitioner was tried than the testimony of Tom Johnson, a member of the Board of Supervisors off and on since 1904 and in continuous service since 1928, that:

> "Q. Mr. Johnson, in making up your jury list since you have been supervisor have you made any effort at any time to determine whether in the registration books for your beat there were registered Negroes with a view of listing them for jury service?
>
> A. I have never had that in mind, because we did not have any darkies of consequence in the beat, have not yet. I have enough troubles without going into all those details" (R. 46).

Mr. Johnson, on the other hand, testified:

> "Q. As a general thing, the vast majority of whites meet those requirements of good intelligence, sound judgment and fair character?
>
> A. Not all.

[18] Mississippi Code, 1942, Section 1766.

Q. I would hate to say all. The vast majority of them do though, don't they?

A. The vast majority do; yes, sir.

Q. Therefore you list whites insofar as that qualification is concerned generally, don't pay so much attention to it, is concerned generally, don't pay so much attention to it, as you do regard them of good intelligence, sound judgment and fair character?

A. There are some exceptions. In other words, suppose a man is in trouble all the time, been convicted of selling whiskey, any other violations of the law, I don't consider him worthy of a juryman.

Q. When you have that knowledge certainly you don't, and you are right, but where you don't have knowledge personally and should not have any, you go on the assumption he will meet that qualification?

A. Yes, sir; as far as I know I try to put him in there if (fol. 74) he is qualified in that request" (R. 48).

The extent of this discrimination becomes more apparent when we compare the fact that there are 10,435 white persons over the age of twenty-one in Lauderdale County and 5,548 Negroes over the age of twenty-one in that county and witness after witness testified that no Negro had ever been called for jury service in that county.[18a]

This type of law enforcement is in direct opposition to our Constitution as interpreted by this Court and is in flagrant disregard of the principle as set forth in a recent decision.

> "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently

[18a] 16th United States Population Census—1940.

such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury."[19]

## II

**The conviction of petitioner upon confessions and statements extorted by force, duress and intimidation obtained by officers and agents of the State of Mississippi while acting in their official capacity is a denial of the equal protection and due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.**

From the testimony of a deputy sheriff in the instant case, it was ascertained that petitioner, an ignorant Negro youth, was taken to the local jail and placed in the office at approximately 1 p. m. on the afternoon of his arrest (R. 137). He was kept in this secluded office and was denied any opportunity to contact an attorney, relatives or friends. He was forced to remain so confined in the presence of numerous policemen and other law enforcement officials whose powers in his mind undoubtedly were greatly magnified, until about 8 or 8:30 that night. During all of this time he was denied food and drink. He was being continually subjected to grilling, questioning and cross-examination by approximately seven or nine white officers. He was made

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[19] *Thiel* v. *Southern P. Co.*, 328 U. S. 217, at p. 220.

to strip off his clothing and lie on the floor naked (R. 158). There was some testimony which would lead to an inference that he was actually beaten (R. 158). While on the floor, he was continually told that he was lying; that he might as well tell the truth and that they were going to get it out of him anyhow (R. 136-179).

As a result of this tortuous inquisition, petitioner allegedly confessed to having stolen and concealed certain articles belonging to the deceased, and made other statements tending to connect him with the crime. He was then chained and manacled and carried to various remote places where he allegedly pointed out the hiding place of these articles and identified them.

After a brief and cursory preliminary hearing as to the voluntary nature of parts of these confessions, at which time only one witness testified, the court allowed numerous references to be made to them over the objection of petitioner (R. 180, 181, 185, 186, 187, 204, 217, 218, 219).

These rulings were error and the admission of such testimony was in violation of constitutional guarantees of equal protection and due process of the law.[20]

The State Supreme Court in its opinion attempted to justify the admission of various portions of the appellant's alleged confession on the ground that they "had definite relations to the articles mentioned and to the pointing out of the place where appellant admitted he had concealed them . . . ." However, as stated by this Court:

> "The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent

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[20] *Bram* v. *U. S.*, 168 U. S. 532; *Brown* v. *Mississippi*, 297 U. S. 278; *Chambers* v. *Florida*, 309 U. S. 227; *Lisenba* v. *California*, 314 U. S. 219; *Ward* v. *Texas*, 316 U. S. 547.

fundamental *unfairness in the use of evidence whether true or false.* The criteria for decision of that question may differ from those appertaining to the state's rule as to the admissibility of a confession. As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice . . . . Such unfairness exists when a coerced confession is used as a means of obtaining a verdict of guilt. We have so held in every instance in which we have set aside for want of due process a conviction based on a confession" (italics ours).[21]

The conviction of petitioner herein should be reversed. It was based solely upon a confession secured under circumstances constituting duress and intimidation, a situation which has been many times the basis for this Court's reversal of such unlawful convictions.[22]

## Conclusion

Petitioner was indicted and tried by juries from which members of his race were systematically excluded simply because they were Negroes. This not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government.

The record clearly shows further that petitioner's conviction was based upon portions of a confession extorted from him through the use of force, duress, violence and intimidation.

The court's refusal to quash the indictment herein, and its refusal to quash the special venire and the admission of

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[21] *Lisenba* v. *California, supra,* at 236.

[22] See footnote 20, *supra.*

portions of an unlawfully obtained confession were violative of the Constitution and laws of the United States.

WHEREFORE, it is respectfully submitted that the judgment of the Supreme Court of the State of Mississippi should be reversed.

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In the Supreme Court of the United States

OCTOBER TERM, 1947

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No. 122

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EDDIE (BUSTER) PATTON, *Petitioner*

vs.

STATE OF MISSISSIPPI

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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# *Brief For the State of Mississippi, Appellee*

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## TABLE OF CASES CITED IN THIS BRIEF AND PAGES WHERE FOUND

## MISSISSIPPI CONSTITUTION OF 1890

Sections cited in this brief:

Section 264; Jurors must be registered and able to read and write; page 23.

Text of Section 264 of Constitution, page 23,

Section 241, Constitution, text of page 24.

Section 242, Constitution, text of page 24, 25.

Section 243, Constitution, text of page 25.

Section 244, text of pages, Brief; 25.

Qualification of voter—Need not be able to read and write, if he understands it or is able to give a reasonable interpretation thereof;

Section 248, text of page 25—Remedy if registration is denied by appeal to courts;

Section 26 referred to on page 44, 45 as to right to take shoes after arrest, page 44, 45.

## STATUTES CITED IN THE BRIEF

Code of 1942, Section 1762, who are qualified to serve as jurors, page 4 to 26-27; Text of Section 1762;

Section 2505, Code of 1942, copy of special venire to be served on defendant or counsel one entire day, page 6;

Section 3224, voter may appeal from a denial of the right to register, page 25, 26;

Section 3228, appeal—May have bill of exceptions—procedure, page 25, 26;

Section 1764, who is exempt from jury duty, page 27.

Section 1765, who is exempt from jury duty as a personal privilege, page 27, Text of Section 1765, page 27;

Section 1766, list of jurors to be made up by board of

supervisors—men of sound judgment, good intelligence and fair character, able to read and write, registered voters, etc., page 27;

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Section 1768—Certified copy of jury list to be given clerk of board of supervisors and put in the jury boxes, page 29;

Section 1772—Judge to draw names of jurors at each regular and special term of court, names of jurors to serve at the next term, etc., page 29;

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Section 1774, jurors, if not drawn at term, judge may draw in vacation, page 29, 30;

Section 1777, sheriff to execute venire facias, page 30;

Section 1778, contempt of court not to perform jury duty, page 30;

Section 1779, number of grand juries, how drawn, etc., page 30;

Section 1780, foreman of grand jury and oath taken, impartiality, etc., page 30;

Section 1781, judge to charge grand jury, page 30;

Section 1794, procedure in case of insufficient jurors, non-attendance, etc., the court's power, etc., page 31;

Section 1794, full text of; page 31;

Section 1796, challenge to affay none except for fraud or quashed, page 32;

Section 1798, jury laws directory, page 32.

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POINT I

The evidence is utterly insufficient to show that any race discriminate was practiced in selecting jurors for jury service. It does not sufficiently appear that any registered negro had the qualifications to vote.

Constitution of 1890, Section 264, 241, and 248.

Code of 1942, Sections 1762, 1764, and 1784 and 1789.

See testimony B. M. Stephens, printed record, pages 3 to 6; Addie Rivers, 6 to 12; Cicero Ferrill, 12 to 22; Howard Cameron, 23 to 31; Judge J. A. Riddell, 48 to 53; George Beeman, pages 54 to 57; Donovan Ready, 57 to 60; E. C. Gunn, 63 to 67; L. D. Walker, 63 to 68; O. L. King, 69 to 73; William Wright, 74 to 79; Frank Kennedy, 80 to 84; W. Y. Brame, 85 to 86; See this brief, pages 1 to 16.

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## POINT II

The statements and confessions of the defendant to the officers, and his pointing out articles taken from the deceased and from his store or place of business was free and voluntary and the officer's testimony in reference thereto is not disputed. The defendant might have testified on the objections thereto without testifying before the jury either on the objection or on the merits. No testimony disputes the officer's testimony. See testimony of A. B. Ruffin, 86 to 129, printed record; Martin, page 129 to 133; A. B. Ruffin, page 134 to 136; Martin Gunn, page 136; A. B. Ruffin again recalled, 136 to 141. See this brief, page 44, et. seq.

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## POINT III

The evidence shows overwhelmingly that the defendant is guilty. See printed record, pages 86 to 141.

See this brief, page 45 to end.

Ranson v. State, 149 Miss. 262, 115 So. 208, p. 50.

Sauer v. State, 166 M. 507, 144 So. 225, p. 50.

Hardy v. State, 143 M. 353, 108 So. 227, p. 50.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA
1947-1948 TERM

EDDIE (BUSTER) PATTON, *Appellant*

vs. No. 122

STATE OF MISSISSIPPI, *Appellee*

## BRIEF FOR APPELLEE

This is an appeal by certiorari from the judgment of the Supreme Court of the State of Mississippi affirming the death sentence for murder, by the appellant, of one Jim Meadors which case originated in the circuit court of Lauderdale County, Mississippi; there being a conviction on an indictment in due and regular form for said murder before a jury of the circuit court of Lauderdale County, Mississippi, which resulted in a death sentence for the appellant, from which he appealed to the Supreme Court of the State of Mississippi, where the judgment of conviction was affirmed. The opinion of the Mississippi Supreme Court affirming said conviction appearing in the record for the certiorari at page 227, et seq., abridged record, page 46, and the judgment of affirmance was entered on the minutes of said Supreme Court of Mississippi shown at page 237 (152 of abridged record) of the record. I will not make a detailed statement of facts in the case, but will ask the court to read the full record as I do not agree with many statements in the brief for the appellant on the motion for certiorari, and especially statements with reference to the confession made to the officers of Lauderdale County, Mississippi. There is no evidence in the record to contradict the testimony of the officers as to its being free and voluntary, neither the appellant, defendant in the court below, nor any other witnesses introduced disputed any of the facts testified to by the said deputy sheriffs, and others who testified on be-

half of the State. The appellant chose not to testify although a competent witness; and could have testified on or in the absence of the jury on the admissibility of the confession. Neither did he testify on the merits at all. He chose to be a silent party. It appears that Jim Meadors was operating a place of business about four miles south of the city of Meridian which was known, and spoken of, as a night club by some of the witnesses. It appears that this place of business was operatd from about 9:00 or 10:00 A.M. until about 10:00 P.M., and a young lady who testified in the case worked in the said place in the day time but did not work at night. On the morning following the killing of Meadors, this lady went to the place of business to work and found the dead body of Mr. Meadors in the store and called for help, calling the sheriff's office and also an undertaking establishment in Meridian. The deputy sheriffs responded to this call and also an employee of the undertaking establishment went to the place of business of the deceased to get the body to prepare it for burial, and they testified as to the facts that they found which led to the belief that the appellant was the killer. Without setting forth the evidence as to the condition of the body of the deceased, the finding of the peculiar tracks leading from the place where the killing occurred, and to the investigations made, I desire to say that the murder was one of peculiar brutality and clearly connected the defendant with the killing as the guilty agent. The original record from the circuit court to the Mississippi Supreme Court is very voluminous and it would consume quite a lot of space to set forth the testimony in detail.

When the case was called for trial in the circuit court of Lauderdale County, Mississippi, the defendant filed a motion to quash the indictment which appears in the abridged record for certiorari to the Supreme Court of the United

States on pages 2 and 3, and page 16 of the original record from the circuit court of Lauderdale County to the Supreme Court of Mississippi. This motion to quash contained three grounds appearing on page 2 of the record for certiorari.

> (1). The defendant is a negro and has been indicted by the Grand Jury during the present term of this court for the murder of a white man, and that a large percentage of the qualified electorate of the county from which the jurors are selected is of the negro race, and no member of this race was listed on the general venire summoned for the first week of this court from which the Grand Jury was drawn and empaneled, nor on the venires for either of the other weeks of this court.

(This allegation is not sustained by the proof, which shows very few negroes, if any, were qualified jurors.)

> (2). That the general venire or venires issued for this term of court, from which the Grand and Petit Juries were selected, did not contain the name or names of a single member of said race qualified for jury service.

> (3). That for a great number of years and especially since 1935, and during the present term of court and in making up the jury box from which jurors have been selected, empanneled, and sworn, there has been in this county a systematic, intentional, deliberate and invariable practice on the part of administrative officers to exclude negroes from the jury lists, jury boxes and jury service, and that such practice has resulted and does now result in the denial of the equal protection of the laws to this defendant as guaranteed by the 14th amendment to the U. S. Constitution.

Upon this motion, much testimony was taken, but there was no definite showing as to how many negroes were registered in Lauderdale County and how many were able to read and write, nor how many of those who were registered were of age for jury duty and how many were disqualified for jury service under the laws hereafter referred to or how

many complied with the requirements for jury service under section 1762 of the Mississippi Code of 1942 which reads as follows:

> "Every male citizen not under the age of twenty-one years, who is a qualified elector and able to read and write, has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years and who is not a common gambler or habitual drunkard, is a competent juror; but no person who is or has been within twelve months the overseer of a public road or road contractor shall be competent to serve as a grand juror. But the lack of any such qualifications on the part of one or more jurors shall not vitiate an indictment or verdict. However, be it further provided that no talesman or tales juror shall be qualified who has served as such tales juror or talesman in the last preceding two years; and no juror shall serve on any jury who has served as such for the last preceding two years; and no juror shall serve on any jury who has a case of his own pending in that court; provided there are sufficient qualified jurors in the district, and for trial at that term."

Other statutes of the State of Mississippi bearing on the qualifications will be referred to hereafter. After the motion to quash had been heard and overruled, the defendant made a motion for a special venire which was sustained and a venire was summoned by the sheriff from the qualified persons subject to jury duty and rendered to the court. Whereupon, the appellant moved to quash this special venire for several reasons, among which was that no negroes were summoned on the special venire, by the sheriff, and also because the names of the jurors were not drawn from the jury box of the county which had been refilled under provisions of law less than thirty days from the beginning of the trial. This motion was also overruled by the court and the jury was empanneled and questioned at length, and found to be fair and impartial by the trial court,

which holding was also affirmed by the Supreme Court of the State of Mississippi. The substance of the proceedings are set forth and the statutes are referred to and also court decisions hereafter in this brief.

A large amount of testimony was taken upon this motion in which the circuit clerk, the deputy circuit clerk, sheriff, chancery clerk and five members of the board of supervisors and other persons testimony was taken.

It appeared therefrom that a very few negroes had registered as voters in the said county, and most of these who had registered were either doctors, lawyers or teachers in the public schools or those who were beyond sixty years of age and were not required to serve as jurors.

The motion was overruled by the Court, and then a motion for a special venire facias was made which appears on page 18 of the record, which motion was sustained by the Court. In the order sustaining the motion for a special venire facias the Court recited as shown on page 26 of the original record:

> "And it appearing to the court that the jury box of the county has been refilled by the supervisors less than 30 days ago: Because said jury box was exhausted."

The Court thereupon directed the clerk of this court to issue to the sheriff of the county a venire facias directing the said sheriff to summon from the body of the county one hundred persons qualified for jury service, summoning twenty from each of the supervisors districts, the writ to be returnable before the court on the 27th day of February, 1946, at 9:00 o'clock A.M., and that when same had been executed, a certified copy thereof with the sheriff's return thereon showing upon whom the writ had been served and upon whom not served, together with a certified copy of the indictment in this case, be upon or delivered to the de-

fendant or his counsel for one entire day before the trial as required by Section 2505 of the Code of 1942.

The defendant duly excepted to the action of the Court in ordering the said jurors summoned from the body of the county instead of having them drawn from the jury box.

Prior to the filing of the motion for a special venire a motion for change of venue was filed and heard.

These various orders and motions seem to have been placed irregularly in the record instead of being placed in consecutive order.

Considerable testimony was offered on the motion for change of venue, and change of venue was denied; thereupon, the defendant, through his counsel, filed a motion to quash the special venire so ordered and directed to be issued from the county at large, in which motion four grounds are set forth as reasons for quashing, the first ground being that the sheriff did not draw, list or summon any member of the colored race, although there are members of the colored race qualified for jury service, and that the action of the sheriff in reference thereto was in pursuance of a well defined and invariable policy followed for years by administrative officers in this county of excluding negroes from jury service and discriminating against them in the selecting, drawing, listing, and summoning of jurors, and thus denies to the defendant the equal protection of the laws guaranteed to him by the 14th amendment to the Constitution of the United States and the laws of the Constitution of the State of Mississippi.

The second ground was that the special venire was improperly and wrongfully and illegally ordered drawn and summoned from the body of the county instead of being ordered drawn from the regular jury box of the county.

The third ground was that the writ of venire facias should not have issued to the sheriff for service but that the court should have appointed someone to serve it, or to be delivered to the coroner or other officer designated by law for service, because of the fact that the sheriff's office, that is his deputies, are interested in the conviction of this defendant and that they claim to have secured from him a confession of his guilt.

The fourth ground was that the sheriff selected and listed the names of persons he desired to summon under the writ or a large part of them before the writ was issued and did not go into the various beats and summon at random or without predetermination the requisite number of persons for jury duty.

A great deal of testimony was taken on the motion to quash, as will appear hereafter, but at the end of the testimony the judge overruled the motion to quash.

The testimony on motion to quash the indictment and on the ground of the motion to quash the special venire based upon the failure to have negroes placed in the jury box from which juries are drawn, made up and empanneled.

It appears that after the Court had appointed Honorable T. J. McDonald and L. J. Broadway to defend the appellant that the defendant, by some means, secured the employment of Mr. Broadway as a hired attorney; and after the request of this attorney, Mr. McDonald was relieved from further participation in the trial, but Mr. McDonald had participated in the motion to quash the indictment and to quash the special venire and in the motion for the change of venue.

It appears from the voluminous testimony on the motion to quash the indictment and the motion to quash the special

venire that there were very few negroes registered which is required by Section 264 of the Constitution; and, consequently, there were extremely few negroes who could qualify as jurors, and the circuit clerk estimated the number of male negroes possibly qualified for jury service at twenty-five, there being in his estimate only fifty qualified negro voters in the county, who had paid their poll taxes and were thus qualified, at fifty, one-half of which he thought were women voters, and the other twenty-five being largely composed of negroes who were teachers in public schools, physicians, lawyers or otherwise excusable from jury service, and who would not likely be put in the jury box because of the expense of summoning as jurors those who have the right to be excused, and thus they were omitted from the jury lists and jury boxes in order to save expenses.

The testimony further shows there were from 9,000 to 12,000 voters in Lauderdale County altogether from which, excluding negroes, would leave from 9,000 to 11,050 white registered voters, approximately one-half of which would be women.

### The Evidence on Motion to Quash

The first witness introduced on the motion to quash the indictment was B. M. Stephens, who was connected with the City Identification Bureau and a resident of the city of Meridian who had formerly been sheriff for four years beginning in 1932 and had been a supervisor for eight years of District 3 in said county beginning in 1924.

He testified that during his term as supervisor there were no registered negro voters qualified for jury service in that district.

Another witness (Mr. King) who is now a supervisor serving his second term in that district testified that there

was only one negro registered voter in said district, and that this negro voter was a medical doctor; and, consequently, he could not be required to serve on the jury. He also testified that during his term of services as supervisor and sheriff that he had not observed any negro jurors serving in the Circuit Court. He testified that during his official term he was required to attend the Circuit Court and hear the Circuit Judge charge the Grand Jury, and that he did not think any negroes had served on the jury.

Mrs. Addie Rivers, Deputy Circuit Clerk, testified on the motion that she had been such deputy since 1942, and that she had charge of or access to the registration books of voters every day in the week; that she had never checked the books to see how many negroes were registered, and that sometime during her services Mr. Ferrill, the Circuit Clerk, had been requested by someone making up Federal juries to get such person some colored qualified electors, and that they only checked boxes in District 1 in which the city of Meridian is situated and principally inside the city, and that they found eight qualified negro jurors in that district; that they did not check all the precincts, but conformed to the request of the Federal authorities to get eight or ten negroes qualified for jury service.

She testified further that she had not registered the colored voters who were registered; that Mr. Ferrill had that authority, and that they had never registered a negro without checking the color but that she had not registered any.

Mr. Ferrill, the Circuit Clerk, was introduced on the motion, and his testimony begins on page 58 of the record. He became Circuit Clerk on the 20th day of January, 1943, beginning by serving an unexpired term of Mr. Bledsoe, who had died, and that he was since re-elected Circuit Clerk;

that he attended the Circuit Court at each term of the Criminal Court to hear the judge's charge to the Grand Jury, and that he did not recall any negroes serving on the Grand or Petit Juries; that prior to his appointment to fill the vacancy mentioned, he had been a Deputy Chancery Clerk; that when the board of supervisors made up their lists of jurors which were to serve in the Circuit Court it was a custom of the Chancery Clerk's office to turn the list over furnished by the board to one of the stenographers to have entered on the minutes, and they did not pay particular attention to the names so furnished by the board of supervisors, and that he did not know whether any negroes were placed on the lists by the members of the board of supervisors, but that he does not remember any negroes serving on the jury during the times he was either Deputy Chancery Clerk or Circuit Clerk.

He testified further that it was the custom of the members of the board of supervisors in making up the lists of jurors to check the registration and poll books, the poll books being principally used because the poll books showed not only the same persons registered upon the registration books but also showed whether the voter had paid his poll taxes in time to qualify him as an elector; that he did not know whether any negroes had been drawn during this period or not; that he did not know who was put in the boxes, but that he had never seen a negro serving on the jury. He also testified with reference to the request from Federal authorities for some negro registered voters in Lauderdale County; that it was the custom of the Federal authorities to put a few negro electors in the lists of jurors selected for the Federal Court, Meridian being one place where the Federal Court was held.

He also further testified that there were forty-nine voting precincts in the whole county, and that in District 1, in

which Meridian is situated, there were five voting precincts in the territory outside the City of Meridian. The Circuit Clerk states that he doesn't think there were over fifty negro qualified electors, but he had never checked to ascertain definitely, and that most of the negro registered voters that he knows were either preachers or teachers in the public schools or persons over sixty years of age.

It appears also from the testimony that the jury box filled at the April meeting of the board of supervisors became exhausted, and that the box was refilled.

Mr. Howard Cameron, the chancery clerk, testified that he had been chancery clerk since January, 1936, and prior to that time he was deputy chancery clerk beginning in April 1933. He testified that the members of the board of supervisors each go into the circuit clerk's office and there secure a registration roll from the circuit clerk and from this roll they prepare a list of jurors in their respective districts and after the list is prepared it is then turned over to the chancery clerk, and the chancery clerk has it copied and entered on the minutes of the board of supervisors which they then compile and certify a copy of this list and transmit it to the circuit clerk.

He was then asked if he had a very clear judgment of the number of qualified electors in the county and stated that he had his own opinion, but had been rudely shocked on several occasions; that it was a strictly personal opinion; that it was a hard thing to say how many registered voters were in the county, but he thinks there were between 8,000 and 10,000, but he did not know definitely.

He was then asked as to the number of registered voters of the negro race who were qualified electors in the county and said:

"When you say qualified electors, I presume you mean those who are registered and those who have paid their poll taxes; also those whom the supervisors feel are competent from the standpoint of being unbiased and fair-minded?"

When he was asked to give an estimate of the number of the negro race registered as voters, he said:

"Frankly, I have never given it any consideration, but I am of the opinion that there are several hundred of them."

He testified further that he had never made an investigation at all, but that he did know for a fact that there were negroes on the registration rolls and that he did know for a fact that there had been negroes to vote in Lauderdale County.

His testimony taken altogether shows that he had no definite knowledge as to the number of the negro race registered as voters and had never made any investigation along that line.

He further testified that he attended the criminal court to hear the judge charge the Grand Jury, and he never remembers to have seen a negro serving on the Grand or Petit Juries.

Mr. W. Y. Brame, sheriff of the county, testified on the motion the same as to negro jurors or registered voters, and had no definite or clear judment about the matter, but thought there might be forty or fifty negro voters in the county.

He testified that the board of supervisors in making up the jury lists frequently checked the books in his office to see if people had paid their taxes after finding their names on the registration books; that the usual practice was to take the poll books rather than the registration books, the

poll books being duplicates of the registered voters and containing additional information as to whether poll taxes had been paid by the 1st day of February.

The sheriff is required to make up lists of those who have not paid by February 1st and keep them as a record for the use of the election commissioners in revising poll books to see who are qualified electors.

The examination of all these witnesses is quite prolix and it is exceedingly difficult to state briefly and accurately the full purport of their testimony.

Mr. Tom Johnson, a member of the board of supervisors of District 2 of the county, testified on the motion. He testified that he had served as a member of the board of supervisors continuously since 1928, and had been out some years prior to that, the first term beginning in 1904. He testified that he made a search of the registration books in making up a jury list, and he didn't remember of a single negro voter in his district; that he searches the books every time the jury list is made up because the law requires that, and he didn't recall any negro voters at the time the last jury box was made up about thirty days before the witness testified. He also testified that he attended the Circuit Court to hear the judge's charge to the grand jury and public officers and didn't remember seeing any negro jurors empanneled and serving at any of the terms of court. He testified that there were five hundred or six hundred voters in his district; that in making up his list he had never had it in mind with reference to negro voters because he did not have any darkies of consequence in his beat, and had enough trouble going through the registered voters who were qualified in making up his jury lists; that in making up the jury list he tried to find men who have good intelligence, fair character and sound judgment; and that there

are naturally a lot of men in his district who have never served on juries.

Judge J. A. Riddell, of the Lauderdale County Court, testified that he had been, prior to his election as county judge, practicing law since 1931 but had a license to practice since 1916 but had served for twelve years as county superintendent of education of this county and one term in the State legislature and about sixty days as county prosecuting attorney; that he had attended the circuit court at the criminal terms to hear the judge charge the grand jury in Lauderdale County during all this time mentioned; that he didn't know of any negroes who had been called from the box and sought to be qualified or who had been qualified and taken as a member of the Grand Jury in Lauderdale County; that he had attended the circuit court more than the average person because since 1916 he had a license to practice and had some business in the courts and was interested in the courts; and that he had not seen any negroes serving on the juries.

Various other witnesses were called and the general effect of all their testimony is that there were very few qualified negroes capable of serving on Grand or Petit Juries, and that no one had seen such negroes serving on juries during such time as they testified about.

To sum up the testimony in a nut shell, it appears that there were from 9,000 to 12,000 registered voters in Lauderdale County, and not more than about sixty negroes registered who had paid their poll taxes and thus qualified to vote. It is not shown in this record how many of these registered negroes can read and write, so as to qualify as jurors for under section 244 of the Constitution of Mississippi any person can register and vote although unable to read and write, if he can understand it when read to him or

give a reasonable interpretation of it when it is read to him. Under section 248 of the Constitution, he may appeal if improperly denied registration, and may appeal through all the courts including the U. S. Supreme Court. There is not a word of testimony showing that any negro applied to the circuit clerk for registration as a voter and had been refused registration when qualified by law to vote, the negro generally being indifferent to voting.

The circuit clerk was called as a witness, as above stated, but he was not interrogated about how many negroes sought to register and how many had been refused registration, if any at all.

I desire to call the Court's attention to the testimony of Mr. Donovan Ready, page 57 of the abridged record. This witness is a public accountant, and had been employed by the board of supervisors to check the qualifications of voters for the years 1941 and 1942, at which time there was a contest as to whether the Wine and Beer Law, prohibiting sales of wine and beer in Lauderdale County had been carried in an election for that purpose. He made this check in 1944 to cover that period, and made a very careful and painstaking investigation to report to the board of supervisors on the said matter. He could not tell exactly how many negroes were registered or voted for that purpose, but thinks there were somewhere around thirty-five or forty, possibly between fifty and sixty, that he would say between thirty and sixty colored electors were qualified at that time. He testified that they were registered and had paid their poll taxes in the period required to be qualified, and at that time the largest part of them were preachers and school teachers so far as he knew about these voters' occupations. He could not tell how many were under sixty years of age; that he thought a great many were over sixty. Some were,

but not many; that he knew most of them and that is why he knew they were colored, stating:

> "They don't indicate on the record that they were colored, but they were mostly colored preachers, as I say, and colored teachers and they were middle age on the average. There were some probably over sixty, but I wouldn't say a great number of them were."

He further testified that they were predominantly preachers and teachers who were the better educated negroes of the county, and that better than half of them were preachers.

The District Attorney also examined many of the witnesses as to the motion for a change of venue, and the proof was overwhelming that there was no pre-judgment of the case by the mass of people of the county. The same thing was shown in the examination of the witnesses on the motion to quash the special venire. From all the testimony in the case it is manifest that the defendant could get as fair a trial in Lauderdale County as in any other county in the state.

### Facts Concerning the Trial on the Merits

The deceased, Mr. J. L. Meadors, was operating a club or place of business about four miles south of the city of Meridian on Highway 45. He was about fifty years of age, and was last seen alive by his wife about six o'clock in the morning which he was killed. Somewhere near 11:00 o'clock that morning, Mrs. J. L. Taylor, a witness for the state who worked for the deceased and was his sister-in-law, went to the store to resume her work there and found the body of the deceased lying on the floor of the club or store dead.

She did not know how long he had been dead. She knew the defendant, who had formerly worked for Mr. Meadors but who had quit about two weeks before.

When she found the body, she called the sheriff's office and she then called the Williams Funeral Home, telling them of the finding of the body, and they came out about 11:00 o'clock—in other words, as soon as they were notified and as soon as they could get there, and the body was removed to the Williams Funeral Home.

She testified as to the bloody condition of Mr. Meadors' head and face and blood around the body, the head of the body being somewhat under the corner of the counter, and she described the position of the body.

She also identified a lunch box belonging to Mr. Meadors in which he kept the money taken in the business which he carried with him when he left the business to go to his home.

She also identified the hammer used in the place of business of Mr. Meadors for breaking coal, and with which the proof shows the deceased had been beaten by someone, the hammer being principally used for breaking coal for the heater.

She also identified a hat found in the store or club on the morning after the body was discovered which belonged to the appellant, and identified the defendant stating that they called him Buster instead of Eddie.

This witness did not work at night, and usually came to work there about 10:30, but did not go on the morning in question until around 11:00 o'clock, and described the scene as best she could about the body. The record shows this witness was deeply affected, and had to pause at times before she could resume her testimony, stating she was very nervous.

Mr. J. A. Stroud was called for the State. He works for the Williams Funeral Home as an embalmer, and handled the body of the deceased, Mr. Meadors.

He identified the clothing that the deceased had on which was introduced in evidence and described the condition of the clothing.

He examined the body for wounds, and stated that the body was bruised and beaten, his head being very badly beaten. He testified that he had gashes and cuts all over his head and face; that there were fifteen from the neck up, running from one inch to one and one-half inches from the base of his neck to the top of his head; that there were a couple of scratches on the face running from an inch to an inch and one-half to two inches in length; and that ones on the top of his head went very deep.

The state next introduced Mr. A. B. Ruffin, deputy sheriff of Lauderdale County.

He testified that on the 11th day of February, 1946, he had a call to make an investigation as to the dead body that was found at Rock Hill, which body was Mr. Jim Meadors; that he reached there about 11:00 o'clock; that he went in response to a telephone call from Mrs. Taylor; that Russell Danner and he went out there; that when they drove up to the front the ambulance had just driven up ahead of them; that he, Russell Danner and the two boys who worked with the ambulance walked inside and found that the place was terribly torn up. That a lot of broken bottles and things like that were there and blood was all over the place; that they found Mr. Meadors with his head lying partly underneath the counter on top of a case of Seven-Up bottles, partly filled; and he described the surroundings of the body, etc.

He testified that he called the coroner and held an inquest, and during the time they were searching the place for evidence of anything that would lead to the reason for the

killing, or for clues, and that they searched the place pretty thoroughly.

He found a hat underneath the ice box and testified that the long ice box was made into the counter. The hat which they found underneath the ice box was identified in the evidence as belonging to the defendant. They searched inside the building for the money and did not find it nor did they find the tin box which was introduced in evidence and called a lunch box, which proof shows Meadors had and which afterwards was found in the custody of the defendant.

He testified that they searched on the outside of the building, and found some tracks; that whoever made the tracks was running, and that the tracks were a long distance apart, the distance between the tracks being estimated at about five feet; that they were suspicious looking; and that these tracks were what they found first.

He testified further that the tracks seemed to make more pressure on the toes, and that casts were made of these tracks; that one of the heels in the tracks was run over; what is known as a run-over heel; that this run-over heel was on the right foot; that he also made a cast of the left foot which was introduced as evidence.

He further testified that later in the day the defendant was arrested; that at the time he was arrested the shoes were taken off of him, and he was wearing a pair of shoes with a part of the heel on the right shoe with a soft part in the center, which was indicated in the cast.

He testified further that the left shoe did not have any heel at all and had a rough, soft rubber sole.

The defendant then made objection that this testimony was a violation of sections 23 and 26 of the Mississippi Constitution; that if the officers took the shoes from this man,

and he testified that they did, no comparison could be made with the case or no evidence made to show that they were made by one and the same tracks until its admissibility is properly determined, which objection was overruled.

Mr. Ruffin, the deputy sheriff, testified that he had found a hat belonging to the defendant in the night club or store under the ice box; that he did not know at the time whose hat it was, and spent some little time asking people as to whom the hat belonged, and finally learned that it belonged to the defendant.

He saw the tracks, as indicated above, and their peculiarities and had casts made of these tracks which appeared to be running as above stated. On this information he had reason to believe that the appellant was then guilty, and they arrested the appellant and took the shoes from his feet and tested them and placed them in the cast and they fit the cast exactly.

Witnesses describing the peculiarities of the shoes and of the tracks and the casts made together with the information as to the hat belonging to the defendant was sufficient to justify the appellant's arrest and were reasonable grounds to believe that he had committted the felony.

The appellant, under questioning by the officers, admitted the hat belonged to him and made a full and complete confession as to the killing and the incidents of the killing and the methods used in the killing.

The appellant, then, after questioning, carried the officers to a place about half a mile northwest of the place of the killing and showed them clothes hidden in a pine top or brush heap which was the coat of deceased in which was wrapped some other garments of the deceased and also the lunch box described in the evidence which the deceased had used as a container for his money while at his place of busi-

ness and conveying it to his home for safekeeping at night, and in this lunch box were some other little articles described by the witness.

Another deputy carried the appellant to the place where the clothes were pointed out, and the testimony showed that this confession was not induced by threats or promises or hope of reward, and was clearly admissible.

The appellant also carried the officers to another point, some distance from where the clothes were found, where the money was hidden, and he confessed that he had secreted the money at that place, and that he had taken it from the place of the deceased at the time of the killing.

The defendant confessed to the officers in detail as to the means and methods of the killing which showed it to be a brutal and unprovoked murder.

On the night of the killing, the appellant carried the shirt and pants to a dry cleaner in the city of Meridian to have them dry cleaned and pressed, and the pants had indications of blood on them, and in the pants pocket was a ticket with appellant's name on it which showed the pants and shirt were to be delivered on Tuesday, the day following the placing of them in the dry cleaning establishment for cleaning and pressing.

The appellant had on clothes that were fresh when he was arrested, and stated to the officers that he had just changed clothes Monday night after the pants and shirt had been left for cleaning and pressing. The officers had gotten this information by the confession of the appellant or by his statement in answer to questions, and they called the owner of the pressing shop to come down to the shop so they could get the clothing which the appellant had left there. This was after the closing hour of the shop, and the owner

of it left his home and went to the shop and delivered the pants and shirt to the officers, who were deputy sheriffs, and these were introduced in evidence.

There was a great deal of testimony introduced, and the defendant did not testify at all either on the preliminary objection to the admission of his confession and the statements made by the appellant and the production of the articles in Court and the introduction of them in evidence although the defendant had opportunity should he have desired to testify to any facts that might have existed inducing the confession when that was offered in evidence without testifying if he did not want to testify on the merits. In other words, the testimony of the officers, as shown, is utterly without dispute. There is, therefore, nothing doubtful about the appellant's guilt of the murder and of his doing the things testified to by the officers.

A person has a perfect legal right to testify in his own behalf should he desire to do so or he has a right to remain silent and stand on the State's evidence, but if he exercises this latter right, then the jury is entitled to draw every reasonable conclusion that the evidence warrants; and, therefore, the evidence should be accepted as being true unless it is inherently improbable or false. Such is not the case in the evidence involved here.

## ARGUMENT

I submit that there are many facts in the original voluminous record that are not set forth in this Statement of Facts.

The first point in the argument of the appellant is that the lower court erred in overruling the appellant's motion to quash the indictment against him on the ground of systematic exclusion of qualified negroes from jury service,

and in so ruling, denied to the appellant his rights of due process of law and equal protection of the laws granted him by the State Constitution and the 14th amendment of the Constitution of the United States. In other words, the appellant seriously argues the exclusion of negroes from the jury box and the special venire selected by the Sheriff.

This argument should not have been injected into this case on the facts contained in this record and under the laws of the State. I say this with due regard and friendship for the attorneys for the appellant who injected this question into this record, and do not doubt that they felt called upon to do so, and did so out of a regard for what they thought they should do in this case. Nevertheless, there was no probability at all that under Section 2464 of the Constitution negro jurors could be obtained under any reasonable method of drawing the jury in this case.

The record shows that there were some 9,000 to 12,000 registered voters in Lauderdale County and that only from 30 to 60 of these were negroes qualified to vote; but no showing was made as to how many could read or write as required by Section 264 of the Constitution and the major part of the negroes who were registered were not subject to jury duty under the laws of the State, being either over age or excusable for other reasons and could not be compelled to serve had they been singled out and summoned.

I desire, before going into the authorities on this proposition, to call attention to some provisions of the Constitution and the laws of this state. The State, of course, has the right to say what qualifications jurors shall have to administer the high trust involved in jury duty.

Section 264 of the State Constitution reads as follows:

> "No person shall be a grand or petit juror unless qualified elector and able to read and write; but the

want of any such qualification in any juror shall not vitiate any indictment or verdict. The legislature shall provide by law for procuring a list of persons so qualified, and the drawing therefrom of grand and petit jurors for each term of the circuit court."

There is no legal method of compelling any person to register or vote or to qualify for jury service under this section of the Constitution. The term in the above section "unless a qualified elector and able to read and write" is to be construed in connection with the provisions on the franchise contained in article 12 of the Constitution and particularly with reference to Sections 241, 242, 243 and 244 of the Mississippi Constitution.

In section 241 of the Constitution, it is provided:

"Every inhabitant of this state, except idiots, insane persons, and Indians not taxed, who is a citizen of the United States, twenty-one years old and upwards, who has resided in this state for two years, and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered, as provided in this article, and who has never been convicted of bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy and who has paid on or before the first day of February of the year in which he shall offer to vote, all poll taxes which may have been legally required of him and which he has had an opportunity of paying according to law, for the two preceding years, and who shall produce to the officers holding the election satisfactory evidence that he has paid such taxes, is declared to be a qualified elector; but any minister of the gospel in charge of an organized church shall be entitled to vote after six months' residence in the election district, if otherwise qualified."

Under Section 242 of the Constitution of Mississippi it is provided:

"The legislature shall provide by law for the registration of all persons entitled to vote at any election."

It cites further the oath that parties securing registration must take, in which oath he must swear that he is not disqualified for voting by reason of having been convicted of any crime named in the Constitution as a disqualification to be an elector, and that he will answer truthfully all questions pertaining to the right to register and vote.

Section 243 provides for:

> "A uniform poll tax of two dollars, *to be used in aid of common schools, and for no other purpose,* is hereby imposed on every inhabitant of this state, male or female*, between the ages of twenty-one and sixty years, except persons who are deaf and dumb, or blind, or who are maimed by loss of hand or foot, etc."

Section 244 provides that:

> "On and after the first day of January, 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the Constitution of this state; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first, 1892."

Section 248 of the Constitution provides for an appeal from a refusal of registration, and has an important bearing on the question involved in the first Assignment of Error argued by the appellant. The section reads as follows:

> "Suitable remedies by appeal or otherwise shall be provided by law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same."

The Legislature has provided this method of appeal, and every voter has the right to appeal the registrar's decision denying him to right to vote and have a judicial hearing thereon, and this right he may exercise to the utmost limit

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*The word female was not in the original Constitution but was inserted after the adoption of woman suffrage.

by appealing to every court including the Supreme Court of the United States. See Code of 1942, Section 3224, and 3228.

As stated in the beginning of this brief, there is no proof whatever that any negro was denied the right to register or to vote in Lauderdale County.

The Circuit Clerk is the registrar under the law, and from his refusal an appeal may be taken to the circuit court and from thence to the State Supreme Court and from thence to the United States Supreme Court. This being true, the officers in making up the jury lists did not have more than one-half of one per cent of the registered voters to select any negroes from, and the law does not require any particular person to be selected for jury service from the lists of registered voters of the county.

Mississippi has never authorized women to sit on juries, and the record shows that approximately fifty per cent of the voters who are registered are women.

I will now refer to some of the statutes involved to show that the application to quash the indictment and to quash the special venire are utterly without merit, and should not be raised in this case, because there is no showing in the record that there was any qualified negroes under Section 1762 of Mississippi Code 1942. There may be cases, and no doubt are, where counsel should raise the question for the protection of his client, and I would not criticize the raising of the question in some cases where there was a probability of securing classes of persons who were not on the jury lists or in the jury box.

Section 1762 of the Code of 1942 provides that:

> "Every male citzen not under the age of twenty-one years, who is a qualified elector and able to read and

write, has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years, and who is not a common gambler or habitual drunkard, is a competent juror; but no person who is or has been, within twelve months the overseer of a public road or road contractor shall be competent to serve as a grand juror. But the lack of any such qualifications on the part of one or more jurors shall not vitiate an indictment or verdict."

It also provides for talesmen of a jury, etc., which is not pertinent here.

Section 1764 provides who shall be exempt from jury duty, and includes all physicians, osteopaths and dentists actually in practice, all teachers and officers of public schools and locomotive engineers actually engaged in their vocation; and a large number of other persons including all ministers of the gospel and Jewish rabbis actually engaged in their calling, all officers of the Government of the United States, all lawyers practicing their profession, and others numerous in said section.

Section 1765 provides who are exempt as a personal privilege, and reads as folows:

> "Every citizen over sixty years of age, and everyone who has served on the regular panel within two years, shall be exempt from service, if he claims the privilege; but the later class shall serve as talesmen and on special venire, and on the regular panel, *if there be a deficiency of jurors.*" (Emphasis added.)

Section 1766 provides for the making of the list of jurors by the board of supervisors at the April meeting of each year or at a subsequent meeting if not done at the April meeting, and they shall select and make a list of persons to serve as jurors in the Circuit Court for the twelve months beginning more than thirty days afterwards, and provides that as a guide in making this list they shall use the regis-

tration book of voters, and shall select and list the names of qualified persons of good intelligence, sound judgment, and fair character, and that they shall take them as nearly as they conveniently can, from the several supervisor's districts in proportion to the number of qualified persons in each, excluding all who have served on the regular panel within two years. It also provides that the Clerk of the Circuit Court shall put the names from each supervisor's districts in a separate box or compartment, kept for the purpose, which shall be locked and kept closed and sealed, except when juries are drawn. It also provides that the board of supervisors shall cause the jury box to be emptied of all names therein, and the same to be refilled from the jury list as made by them at said meeting. It then provides if the jury box shall at any time be so exhausted of names as that a jury cannot be drawn as provided by law, then the board of supervisors may at any regular meeting make a new list of jurors in the manner herein provided. It is then made the duty of the Circuit Clerk and the registrar of the voters to certify to the board of supervisors during the month of March of each year under the seal of his office the number of qualified electors in each of the several districts in the county.

In the present case the box, as made up at the April term, became exhausted during the year, and was refilled less than thirty days before the time of the drawing of the special venire and empaneling of the Grand jury.

The list of jurors made up under this chapter does not require the listing of every voter as a juror, but limits the number that may be listed in such list unless there be a deficiency of jurors in which case the court may order a greater or less number to be listed. (Section 1767.)

Section 1768 provides:

> "A certified copy of the lists shall be immediately delivered by the clerk of the board of supervisors to the clerk of the circuit court, and shall be by him carefully filed and preserved as a record of his office; and any alteration thereof shall be treated and punished as provided in case of the alteration of a record."

As already stated, the county contained from 9,000 to 12,000 registered voters. The law limits the number that could be selected, and no more than eight hundred can be put on the list unless ordered by the Circuit Court because of the reasons mentioned.

Section 1772 of the Code provides:

> "At each regular term of the circuit court, and at a special term if necessary, the judge shall draw, in open court, from the five small boxes enclosed in the jury box, slips containing the names of sixty-two jurors to serve as grand and petit jurors for the first week and thirty-six to serve as petit jurors for each subsequent week of the next succeeding term of the court, drawing the same number of slips from each and every one of the five small boxes if practicable, and he shall make and carefully preserve separate lists of the names, and shall not disclose the name of any juror so drawn; but only thirty-six names shall be drawn for each week or any term where a grand jury is not to be drawn. The slips containing the names so drawn shall be placed by the judge in envelopes, a separate one for each week, and he shall securely seal and deliver them to the clerk of the court, so marked as to indicate which contains the names of the jurors for the first and each subsequent week. If in drawing it appears that any juror drawn has died, removed or ceased to be qualified or liable to serve as a juror, the judge shall cause the slip containing the name to be destroyed, the name to be stricken from the jury list, and he shall draw another name to complete the required number."

Section 1774 provides if this is not done in term that the

judge may draw them in vacation, if convenient; and if he does not, and whenever jurors are required for a special term and the judge shall so direct, the clerks of the circuit and chancery courts and the sheriff shall, at the time they should have opened the envelopes, draw the jurors for the term of court, and make and certify the lists thereof; and the clerk shall issue and deliver to the sheriff the proper venire facias.

Section 1777 of the Code provides that the sheriff shall forthwith execute the venire facias by summoning each juror at least five days before the first day of court either by personal service or by leaving a written notice at his usual place of abode; and he shall make return of the venire on the first day of the term, and this section provides for fining of jurors if they do not attend as commanded unless they show good cause.

By Section 1778 it is made a contempt of court not to perform the duties as to juries when so listed and summoned.

Section 1779 provides that the number of grand jurors shall not be less than fifteen nor more than twenty, in the discretion of the court; and that they shall be drawn from the list of persons in attendance as jurors on a separate slip of paper, and the names from each supervisor's district shall be placed in a separate box or compartment, in open court, and shall be drawn out by the person designated by the judge, the number directed by the court; and said names shall be drawn from each box in regular order until the number designated is drawn, and the jurors whose names are so drawn shall constitute the grand jury; and be empaneled and sworn as such. The court shall poll the jury to ascertain whether any juror is directly or indirectly interested in the illicit sale of vinous, malt or spirituous liquor.

The court then appoints a foreman of the grand jury under Section 1780, and that section prescribes their oath which it will be seen is very strict in securing impartial action by the grand jury, and each member of the grand jury must also take an oath to the same effect.

Section 1781 requires the circuit judge at each term of the criminal court to charge the grand jury concerning its duty and to expound the law to it as he shall deem proper, and he shall give it in charge certain actions mentioned therein.

Section 1783 provides that all county officers shall attend the criminal term of the circuit court and hear the judge's charge to the grand jury and the judge's charge to such officer.

It will be seen from a careful study of these sections that they are designed to secure a fair and just administration of the law, and to secure fair trials and prevent malicious prosecutions, etc.

Section 1794 of the Code provides that:

> "If at any regular or special term of a circuit court it appears that jurors have not been drawn or summoned for the term, or for any part thereof, or that the jurors have been irregularly drawn or summoned, or that none of the jurors so drawn or summoned are in attendance, or not a sufficient number to make the Grand Jury and three Petit Juries, the court shall immediately cause the proper number of jurors to be drawn from the box and summoned, or, if there be not a jury box to be drawn from, the court shall direct the requisite number of persons qualified as jurors, to be summoned to appear at such time as the court shall appoint, and the court shall thereupon proceed as if the jurors had been regularly drawn and summoned."

The empaneling of the Grand Jury is conclusive of their competence, Reynolds vs. State, 199 Miss. 409, 24 So. (2d)

page 781; see Moon vs. State, 176 Miss. 72, 168 So. 476. In Moon vs. State, 176 M. 72, it was held that during the thirty days of the box was refilled a drawing from the box could not be had. See Sec. 1784, Code 1942; Pearson vs. State, 176 M. 9, 167 So. 644.

In the case before us there was no jury box available under the decisions of our court and the jurors could not be drawn from the box during the thirty day period when the box was refilled for a court which was held during that period.

By section 1796 of the Code, a challenge to the array shall not be sustained, except for fraud, nor shall any venire facias, except a special venire facias in a criminal case, be quashed for any cause whatever.

There certainly could be no fraud in the manner in which the special venire was drawn, and consequently it could not be quashed.

By Section 1798 of the Code the jury laws are directory merely, and it is only where there is a departure from the statutory scheme in the manner that prejudices the rights of the party that the jury will be abated for any irregularity.

It is submitted that under these various statutory provisions that in this case on its peculiar evidence a question of failure to have negroes on the jury or summoned as jurors is without prejudice.

I call the Court's attention to the remarkable fairness of the jury that was empaneled in this case to try the case without prejudice, without any desire to do anything except what was right and proper under the law. They were examined at great length and were examined with reference among other things as to whether they would give a negro a fair trial where the killing was a killing of a white man,

and also as to whether they would require an extreme case or a very strong case before they would inflict the death penalty.

It is seldom you see where the question is raised on whether the jury would inflict the penalty of death in case of guilt, the matter being entirely in the discretion of the jury if they believe the case of murder has been made out. I have strongly been impressed with these juries' statements and views that would require an extraordinary case of murder before they would inflict the death penalty, and no complaint can be justly made of the jury who actually tried the case and no question at all as to the guilt of the appellant on the facts and evidence.

The murder was one of peculiar atrocity, and was inspired by a desire to rob the deceased. The fact that he was brutally beaten to death seemed, from this record, to have been done merely to secure the money and suppress the evidence that would exist of robbery.

I am aware that the Constitution of the United States as construed by the Supreme Court of the United States makes a willful or purposeful discrimination against negroes or other classes will cause the Supreme Court to reverse a case where the record shows that a considerable number of negro voters existed in the jurisdiction where the crime was committed were eligible for jury service, and that it is not permissible to discriminate by purposeful desire not to have a particular class on the jury. This matter was specifically decided in the case of Norris v. the State of Alabama, 294 U. S. 587, 55 S. Ct 579, 79 L. Ed. 1074, and Hale v. Kentucky, 303 U. S. 613, 82 L. Ed. 1950, under which case the rule was announced:

"A systematic and arbitrary exclusion of negroes from grand and petit jury lists because of their race

and color constitutes a denial to a negro charged with crime of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Attention must be given in studying these cases to the language used by the Federal Court solely because of their race or color.

In the report of this case in the 82nd L. Ed. (page 1053) there is a case note with reference to the violation of the constitutional rights in criminal cases by unfair practices in selection of grand or petit juries; and at page 1055 under the heading "Application of a Rule to a Particular Race or Class" and sub-heading "Negroes", many cases are cited dealing with unfair practices by leaving races entitled to jury service off the lists or out of the enrollment of those who are discriminated against.

These is also an elaborate case note in 52 A. L. R. 916 appended to the case of Passar v. County Board reporting this case as being a Minnesota case with a case note appended (page 919).

I desire to call the Court's attention to the language used in the Am. St. Report case note quoted from Smith v. State (Oklahoma) 4th Okla. Crim. Rep. 128, 140 Am. St. 688, in which the following language was used by the Supreme Court of Oklahoma:

"The 14th Amendment to the Constitution of the United States does not require the jury commissioners, or other officers charged with the selection of juries, to place negroes upon the jury list simply because they are negroes. The allegation that the jury was composed solely of white men does not violate the 14th Amendment to the Constitution of the United States, and proof of that fact would not support the motion. The ground upon which the decisions of the Supreme Court of the United States rest is not that negroes were not selected to sit upon juries, but that they were excluded

therefrom *solely on account of their race or color.* In other words, there is no law to compel the jury commissioners, or other officers of the court, to select or summon negroes as jurors. They can select any persons whom they regard as competent to serve as jurors without regard to their race or color, but the law prohibits them from excluding negroes *solely on account of their race or color.* Therefore the judge should have heard the testimony, and, if he found from the evidence that there was an agreement among the jury commissioners to exclude negroes from the jury panel simply because they were negroes, or that the officers charged with the duty of selecting and summoning said jurors had refused to select or summons negroes on the jury, and had excluded them therefrom solely upon the ground that they were negroes, then the judge should have sustained said motion. There is no law requiring an officer to place negroes on the panel simply because they are negroes. It is his duty to select the best jurors without regard to race or color. When this is done, the law is satisfied."

This language is taken from 140 Am. St. Rep. 688, which I verified by comparison.

Our own court was in accord with the Oklahoma court upon this question as shown by Lewis v. State, 91 Miss. 505, 45 So. 360, quoted from in appellant's brief. In this Lewis case our court, speaking through Justice Mayes, said:

"There is nothing in our jury law which does not apply with equal force to all citizens, whatever be their race or color. It is a mistaken impression, which seems to have become prevalent, that in order to constitute a valid jury there must be some negroes in the jury list. Such is not the case. A jury may be composed entirely of negroes, or it may be composed entirely of white persons, or it may be composed of a mixture of the two races; and in either and in any case it is a perfectly lawful jury, provided no one has been excluded or discriminated against simply because he belongs to one race or the other."

Our court has also held in Farrow v. State, 91 Miss. 509, 45 So. 619, in accordance with the Federal Court:

> "That where a county board of supervisors, in selecting a list of persons qualified for jury service, knowingly and in accordance with a well established practice, and for the purpose of depriving negro citizens of participating in the administration of justice, and intentionally, keep off the names of negroes from such list, an indictment returned by a grand jury drawn from such jury list should be quashed."

These cases show clearly that where the omission or exclusion of negroes from the jury list was solely for the purpose of preventing negroes serving as jurors in the court and not where the board of supervisors in making up the jury lists selects merely the jurors for their mental and moral qualifications; that is to say, selects men of good intelligence, sound judgment and fair character, from those who have registered and qualified to vote. However, our statutory and Constitutional provisions have been twice before the United States Supreme Court since 1890, the statutes being substantially the same on this question now as then.

In Gibson v. State of Miss., 162 U. S. 567, 40 L. Ed. 1078, our statutes and Constitution were upheld upon this question, the opinion being written by that eminent jurist, Justice Harlan, which appears on page 1078 of the Law Edition Reports. The Court, after citing earlier cases which had held that discrimination against the negro because of race or color alone would render a proceeding a denial of equal protection and due process of law, said:

> "The cases cited were held to have decided that the statutory enactments referred to were constitutional exertions of the power of Congress to enact appropriate legislation for the enforcement of the 14th Amendment, which was designed, primarily, to secure to the colored race, thereby invested with the rights, privileges, and responsibilities of citizenship, the enjoyment of all the

civil rights that, under the law, are enjoyed by white persons; that while a state, consistently with the purposes for which the amendment was adopted, may confine the selection of jurors to males, to free-holders, to citizens, to persons within certain ages, or to persons having educational qualifications, and while a mixed jury in a particular case is not, within the meaning of the Constitution, always or absolutely necessary to the enjoyment of the equal protection of the laws, and therefore an accused, being of the colored race, cannot claim as matter of right that his race shall be represented on the jury, yet a denial to citizens of the African race, *because of their color,* of the right or privileges accorded to white citizens of participating as jurors in the administration of justice would be a discrimination against the former inconsistent with the amendment and within the power of Congress, by appropriate legislation, to prevent; that to compel a colored man to submit to a trial before a jury drawn from a panel from which were excluded, *because of their color,* men of his race, however well qualified by education and character to discharge the functions of jurors, was a denial of the equal protection of the laws; and that such exclusion of the black race from juries because of their color was not less forbidden by law than would be the exclusion from juries in states where the blacks have the majority, of the white race because of *their* color." (Emphasis by the Court.)

Further on in this same opinion, page 1079 of the Law Edition, the Court said:

"We may repeat here what was said in Neal v. Delaware, 103 U. S. 370, 385, 386 (26: 567, 569, 570), namely: that in thus construing the statute 'we do not withhold from a party claiming that he is denied, or cannot enforce in the judicial tribunals of the state, his constiutional equality of civil rights, all opportunity of appealing to the courts of the United States for the redress of his wrongs. For, if not entitled, under the statute, to the removal of the suit or prosecution, he may, when denied, in the subsequent proceedings of the state court, or in the execution of its judgment, any

right, privilege, or immunity given or secured to him by the Constitution or laws of the United States, bring the case here for review."

In this provision the Court held that our Constitutional and statutory provisions were not discriminatory on their face, and that there was nothing in that case that showed discrimination by administrative officers of the State.

It, therefore, clearly appears that where the juries are fairly selected and where all the voters of the State are not required to be placed in the jury box or jury lists, but may be selected from such registration lists for their qualities of intelligence, morality and patriotism are like causes.

In Williams v. Mississippi, 170 U. S. 213, 42 L. Ed. 1012, our statutes and Constitution on the subject were again reviewed and held to be valid. In this opinion at page 1015 of the Law Edition, page 222 of Official Edition, the Court in discussing the Constitutional laws of Mississippi said:

> "Restrained by the Federal Constitution from discriminating against the negro race, the convention discriminated against its characteristics and the offenses to which its weaker members were prone. But nothing tangible can be deducted from this. If weakness were to be taken advantage of, it was to be done 'within the field of permissible action under the limitations imposed by the Federal Constitution,' and the means of it were the alleged characteristics of the negro race, not the administration of the law by the officers of the state. Besides, the operation of the Constitution and laws is not limited by their language or effects to one race. They reach weak and vicious white men as well as weak and vicious black men, and whatever is sinister in their intentions, if anything, can be prevented by both races by the exertion of that duty which voluntarily pays taxes and refrains from crime."

One of the later cases by the Supreme Court of the United States is that of Edgar Smith v. State of Texas, 311 U. S.

128-132, 85 L. L. Ed. page 84. In this case the United States Supreme Court held that:

> "A charge of racial discrimination in the selection of grand jurors is supported by evidence that in a county in which negroes constitute over 20 per cent of the population and almost 10 per cent of the poll-tax payers, and a minimum of from 3,000 to 6,000 of them measure up to the statutory qualifications for grand jury service, only 18 of 512 persons summoned over an 8-year period for grand jury duty were negroes, that of the 18 the names of all but one were so far down on the list from which the grand jury was made up as to render it unlikely that they would be reached, that in fact only five ever served, and that of these five the same individual served three times, so that only three individual negroes served at all, whereas 379 of the 494 white men summoned actually served, and of 32 grand juries impaneled only five had negro members, and that while two of the three commissioners who drew the panel for the grand jury by which defendant was indicted denied that they intentionally, arbitrarily, or systematically discriminated against negro grand jurors as such, one said that their failure to select negroes was because they did not know the names of any who were qualified, and the other said that he was not personally acquainted with any member of the negro race."

In this case and in other cases in the United States Supreme Court it has been held that where there were a large number of negroes qualified for jury service, and none over a long period had been selected to so serve, the Court would treat this as sufficient evidence of discrimination. The Court has also held that it would decide for itself the facts involved in the case where Federal rights, privileges or immunities are involved in the case.

In the second syllabus in this case this rule was announced as follows:

> "On an appeal to the Supreme Court of the United States from a conviction of crime in a state court on

the ground of invasion of constitutional rights, the Supreme Court will, notwithstanding a state court has held the evidence insufficient to establish such invasion, determine for itself the sufficiency of the evidence."

In studying these cases it should be borne in mind the facts as to whether negroes are qualified to serve on juries merely because they were registered voters and on the other hand where the juries are to be selected as in Mississippi because of their good intelligence, sound judgment and fair character and where they must also be registered voters able to read and write under the Constitution of the State. It should also be borne in mind that there is no way to compel negroes or others to register; that is optional. Also, there is nothing to prevent them from registering and qualifying for jury service.

If our laws provided that all registered voters should be entitled to serve on juries there would be a serious question in this case although the number actually registered was exceedingly small—not exceeding one-half of one per cent of the total registered voters. But as the statute has limited the number that can be selected in one year from the total registered voters and requires the board of supervisors to select those "of sound judgment, good intelligence and fair character" the board is charged with the duty of selecting those who are best suited and qualified to render safe and efficient service in the jury box. There are very many registered white voters able to read and write and having the qualities of "good intelligence, sound judgment and fair character" who cannot be placed in the box or on the list and who may never serve in the capacity of jurors although they possess all the necessary educational and moral qualifications required.

The Federal Constitution prohibits the exclusion of a race or class from the jury box, but it does not require any par-

ticular jury to be composed of all members of the class or race involved, and much depends on the State law as to who will be qualified or who will be treated as available for jury service. The chief object is to get a fair and impartial jury. This is a Constitutional guaranty, and when the jury is such, the verdict should not be disturbed for mere technical errors in their selection.

In many of the states, women serve on juries under the State Laws and Constitution, while in many other states they do not serve, and the Supreme Court in the late case of Edna W. Ballard v. United States, 91 L. Ed., (Adv.) Page 195, held that where women were permitted to vote under State Constitution Laws and were systematically and continuously excluded from serving as jurors in certain territories or parts of the State was a discrimination against women which rendered the indictment and judgment void. This case originated in the Federal Court and in the State court, but was pointed out that the Federal Court by statutes of the United States followed State procedure as to he selecting and impaneling of juries. On page 196 of this L. Ed. Advance Opinions of the Court said:

> "We are met at the outset with the concession that women were not included in the panel of grand and petit jurors in the Southern District of California where the indictment was returned and the trial had; that they were intentionally and systematically excluded from the panel. This issue was raised by a motion to quash the indictment and by a challenge to the array of the petit jurors because of intentional and systematic exclusion of women from the panel."

Further on, at page 197, in discusing the rights of jury trials as conceived in this country, it is said:

> "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. . . . This does not

mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury."

It will be seen by an examination of all the many cases cited in this brief that the discrimination must be because of an intentional denial of persons or classes or races entitled to serve on juries for the purpose of denying such groups, persons or races the right to participate in the judicial administration of the laws of the country.

I submit that as the law of Mississippi requires the jurors to be selected from a list of registered voters able to read and write, and this list to be recorded in the chancery clerk's office, immediately after being selected as a matter of public recorded that a challenge of the legality of the jury should be made, not in a particular case, but in a general proceeding in all persons may join either with the movement to quash or those who wish to sustain the board of supervisors in resisting the motion to quash and that this must be done within sixty or ninety days. The laws of the State are designed to get reasonably qualified jurors of fair disposition and intelligence rather than by numbers or proportions and similar unsuitable standards.

Reading a case without studying the factual basis often misleads because the Court frequently uses broad language to express their decisions which is supported by the basic

facts of the particular case but might not be applicable to other case having different factual basis.

When the Constitutional and statutory provisions of Mississippi are considered and applied properly to the facts in this case, the manner of selecting the grand jury which returned the indictment and the selection by the sheriff and his deputies of a special venire afford no reasonable basis for upsetting the action of the Court in this regard.

I deem it unnecessary to enter into the many other questions and cases cited in the brief of the appellant. Only a few authorities will be noticed in addition to what I have said which I conceive to be the only questions that should engage the attention of the court in considering this appeal.

On the point that the jury should have been drawn from the box notwithstanding less than thirty days had passed since the box was refilled, our Supreme Court expressly passed upon this propositon in Pearson v. State, 176 Miss. 9, 167 So. 644, speaking through Judge Anderson, construed the statute involved, and expressly held that the jury and the box were not available for selecting a jury for a period within thirty days from the date of refilling the box.

The counsel for the appellant criticised this opinion as being unsound and contrary to the real purpose of the statute. Counsel, of course, has a right to his personal opinion, but the judicial and other departments of the government must and should follow the decisions of the Supreme Court of the State in construing the statutes. The Court has a right, and is under duty to declare the law according to its judgment after considering the facts and the arguments and prior authorities of the State.

The case of Lee v. State, referred to by counsel on page 26

of his brief, was a case where more than thirty days had expired between the filling of the box and the drawing of the special venire, and the court in that case held that where more than thirty days had expired the jury box was available for drawing of jurors although thirty days had not expired when the term of Court began.

The two cases are in no way inconsistent, and the Court should follow the Pearson case because the court below was obliged to do so and probably had this case in mind when directing the special venire to be drawn from the body of the county.

There is nothing improper in this, and it is in acordance with the law.

The sheriff is a high official of the county and will be presumed to have done his duty conscientiously, fairly and impartially.

When the evidence in this case is examined the testimony of the sheriff and the deputies who selected and summoned the special venire make absolutely certain that fairness was used and that the sheriff had no interest in the suit to procure any result in the trial; but, on the contrary, selected men whose testimony is in the record and shows that the jury desired to act strictly in accordance with justice and the law.

On the trial on the merits counsel complains of the taking of the shoes worn by the appellant after he had been arrested and fitting them into the casts made of the tracks found running from the scene of the killing and having peculiarities with which the shoes worn by the appellant corresponded precisely. Counsel seemed to think that by taking the shoes it was an unlawful search and seizure in violation of his Constitutional rights and that it made him

give evidence against himself contrary to Section 26 of the Constitution.

I take it that there is no doubt about the law that a person may be arrested wherever a felony has been committed and there is probable cause to believe that the person arrested committed the crime. Code 1942, Section 2470.

When the sheriff's deputies went out to the scene of the killing and investigated the building and around the building, they found a hat under the ice box which was identified as the hat belonging to and worn by the appellant and which the appellant subsequently admitted was his hat and which there is no proof to dispute in this record. The fact that the appellant had previously been employed by the deceased and the tracks of a peculiar nature were discovered apparently made by a person running at full speed as shown by the evidence was certainly sufficient to constitute probable cause to arrest the appellant. Code 1942, Section 2470.

When the hat was found, inquiry was made and some time spent in finding out whose hat it was, and dependable information was secured that it belonged to the appellant. This being true, the arrest was a lawful arrest considered solely by the facts discovered prior to the arrest.

When the arrest was made the shoes were taken from the feet of the appellant as it was lawful to do after the arrest, the law being that when a person is arrested he may be searched and anything taken from him that tends to establish the crime or which tends to facilitate his escape.

In Toliver v. State, 133 Miss. 789, 98 So. 342, Toliver had been arrested by an officer, and his automobile was searched without a search warrant or any affidavit for a search warrant, and the car was found to contain intoxicating liquor which was prohibited by law. It was con-

tended in that case that the law of search after an arrest did not apply to the car but was limited, if lawful at all, to the search of the person. But the Court held that the search was authorized and that the car was a means of facilitating an escape and that the officer had a right to take the car and take the contents into his possession, and if the contents showed a violation of the law the evidence was admissible.

In the case of Pringle v. State, 108 Miss. 802, 67 So. 455, Pringle was arrested and a letter taken from his person of an incriminatory nature, and the Court held an incriminatory letter found on the accused was admissible though wrongfully obtained after his arrest.

In Williamson v. State, 140 Miss. 841, 105 So. 479, Williamson was traveling on the highway when met by an officer who asked him what the kegs in the car contained, and Williamson replied that the kegs contained whiskey before arrest or search was made, whereupon the liquor was seized without a warrant and introduced in evidence as a violation of prohibition laws.

In Bird v. State, 154 Miss. 493, 122 So. 539, it was held that where a person was arrested the taking from a person of a hack saw and other articles at the time of arrest for burglary was admissible in evidence.

In Watson v. State, 166 Miss. 194, 146 So. 122, valises and the contents thereof found in an automobile searched by the officers having probable cause to believe that the traveler whom they arrested was guilty of a felony were lawfully secured and hence admissible in evidence.

The evidence obtained by the comparison of the shoes worn by the defendant with the tracks found near the place of the crime and which fitted said tracks and also corresponded with the casts made by the deputy sheriff of the

said tracks, and the tracks and the shoes having the same pecularities made certain or reasonably so that the shoes worn by the defendant made the tracks near the scene of the crime.

Subsequent to such arrest, the appellant admitted that he committed the crime, and pointed out to the officers, as indicated above, where the clothing, lunch box and other things were hidden and to another place where the money which appellant confessed was taken from the lunch box used by the deceased and was carried away and secreted.

Furthermore, on the very day of the crime appellant carried his shirt and pants to the cleaners, as above stated, in the Statement of Facts and his statement to the officers being made freely and voluntarily and all of the evidence of the State being uncontradicted there can be no doubt of appellant's guilt.

The crime was one of peculiar atrocity and deserves the most severe punishment authorized by law. This being true no mere technical ruling or decision even if error would warrant reversing this case.

The Court has often decided that it would not reverse a case where guilt was conclusively established. The whole object of the law is to secure to every defendant a fair trial and also a fair trial to the prosecuting power to the end that justice may be done according to law.

Counsel for the appellant at page 15 of their brief states:

> "Testimony presented before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946—79th Congress at hearings held in Jackson, Mississippi, on the 2d, 3d, 4th and 5th days of December, 1946, showed a state-wide condition of intimidation by State officers of large blocks of Negroes who attempted to register and vote in a recent primary held in that State.

"In 1946, Mississippi passed a law exempting veterans from payment of poll taxes under certain conditions. A great movement of Negro veterans took place all over the State to register to vote. There were 66,972 discharged Negro veterans in Mississippi and practically 100 per cent of them could read and write."

This statement is not contained in the record nor is it justified by anything contained in the record. There is no testimony whatever in the record to show that there was any state-wide intimidation or that any negro anywhere had sought registration and was refused by any officer his right to register. In the trial court, various officers were examined and it could easily have been ascertained from the circuit clerk and others whether or not any negro had been refused registration. If he should be he has his right of appeal to the courts under the Constitution of the State referred to in this brief of mine already. This right of appeal would extend to final right of appeal to the United States Supreme Court. Furthermore there is no evidence that in 1946 that there was a great movement of negro veterans all over the State to register or vote. Nothing of that kind appears in this record and certainly it is not a matter of which the court would take judicial notice. On page 18 of the appellant's brief, it is stated: "From the testimony of a deputy sheriff in the instant case, it was ascertained that petitioner, an ignorant Negro youth, was taken to the local jail and placed in the office at approximately 1 p.m. on the afternoon of his arrest (R. 137). He was kept in this secluded office and was denied any opportunity to contact an attorney. . . . He was forced to remain so confined in the presence of numerous policemen and other law enforcement officials whose powers in his mind undoubtedly were greatly magnified, until about 8 or 8:30 that night. During all this time he was denied food and drink." I submit that a careful reading of all the evidence bearing on the matter does

not show that he was denied food and drink or that he was continually questioned during a long period. The evidence does not support this statement. He further states, "He was made to strip off his clothing and lie on the floor naked. There was some testimony which would lead to an inference that he was actually beaten. While on the floor he was continually told that he was lying; that he might as well tell the truth and that they were going to get it out of him anyhow." This last statement he refers to page 158 and page 336-179 of the record which is not the printed record but appears to have been in reference to the typewritten copy of the abridged record from which the printed copy of the record is made. I ask the court to carefully read the full testimony contained in the typewritten record at these pages and it will appear therefrom that the defendant was not maltreated or abused while in the custody of the officers and that his treatment was not different from that usually accorded to prisoners while officers are legitimately investigating crime and especially crimes of murder.

The State did not introduce all of the officers who participated in the investigation and the attorney for the defendant made the following statement: "If the Court please, I submit that if that is all he is going to offer, with the man being lots of times, when this witness wasn't present, he is the only one so far that has been offered on it, and the other officers were present; that he would have to show by all of those officers that none of them offered him any inducements. We don't have to show anything in connection with it until the proof is offered to show it is entirely voluntary. He has introduced here only one witness and one who was present only a part of the time, covered by the investigation and interrogation of this defendant." The Court stated: "Mr. Broadway, the Court is not in a position to direct the State's case. It can rule on what is before him at the time

it is offered and that, I think, is as far as the Court can go. The Court is not permitted to force the State to put on a witness." And on page 173 of the typewritten record, the Court stated: "All the Court can do is rule on what is before him. That is as far as I can go. If you wish to offer any proof, of course, you are at liberty to offer any proof, put on any officer you care to. I can't make you put on any proof, or make the State put on any."

The defendant did not testify himself as to any of the matters complained of in the investigation by the officers in the jail and elsewhere and the defendant did not testify on the merits either. This being true, the testimony of the State's witnesses must be accepted as the truth of what occurred during the investigation at the jail; at the carrying of the defendant to places where he pointed out articles that he had taken from Mr. Meadors or his place of business. The jury are the judges of the weight and worth of the testimony and the jury's finding of fact cannot be disturbed if supported by evidence. All inferences and conclusions of fact are for the consideration of the jury. See Ranson vs. State, 149 Miss. 262, 115 So. 208; Sauer vs. State, 166 Miss. 507, 144 So. 225; Hart vs. State, 115 So. 887; Hardy vs. State, 143 Miss. 352, 108 So. 727, and the many cases collected in Volume 5, Miss. Digest, annot. (West Pub. Co. edition) Criminal Law, Key No. 741 to 757, inclusive.

I therefore submit that the judgment should be affirmed.

Respectfully submitted,

GREEK L. RICE, *Attorney General*

*By* GEORGE H. ETHRIDGE,
*Assistant Attorney General.*

## CERTIFICATE

I, George H. Ethridge, Assistant Attorney General of the State of Mississippi, hereby certify that I have this day mailed postage prepaid a true copy of the above and foregoing brief for the Appellee to Counsel for Appellant, Honorable Thurgood Marshall at his post office address at New York City, New York.

This the 29th day of October, 1947.

GEO. H. ETHRIDGE,
*Assistant Attorney General.*

# SUPREME COURT OF THE UNITED STATES

No. 122.—October Term, 1947.

Eddie (Buster) Patton, Petitioner, v. State of Mississippi. } On Writ of Certiorari to The Supreme Court of The State of Mississippi.

[December 8, 1947.]

Mr. Justice Black delivered the opinion of the Court.

The petitioner, a Negro, was indicted in the Circuit Court of Lauderdale County, Mississippi, by an all-white grand jury, charged with the murder of a white man. He was convicted by an all-white petit jury and sentenced to death by electrocution. He had filed a timely motion to quash the indictment alleging that, although there were Negroes in the county qualified for jury service, the venires for the term from which the grand and petit juries were selected did not contain the name of a single Negro. Failure to have any Negroes on the venires, he alleged, was due to the fact that for a great number of years previously and during the then term of court there had been in the county a "systematic, intentional, deliberate and invariable practice on the part of administrative officers to exclude negroes from the jury lists, jury boxes and jury service, and that such practice has resulted and does now result in the denial of the equal protection of the laws to this defendant as guaranteed by the 14th amendment to the U. S. Constitution." In support of his motion petitioner introduced evidence which showed without contradiction that no Negro had served on the grand or petit criminal court juries for thirty years or more. There was evidence that a single Negro had once been summoned during that period but for some undisclosed reason he had not served, nor had he even appeared. And there was also evidence from one jury supervisor

that he had, at some indefinite time, placed on the jury lists the names of "two or three" unidentified Negroes. In 1940 the adult colored population of Lauderdale County, according to the United States Census, was 12,511 out of a total adult population of 34,821.

In the face of the foregoing the trial court overruled the motion to quash. The Supreme Court of Mississippi affirmed over petitioner's renewed insistence that he had been denied the equal protection of the laws by the deliberate exclusion of Negroes from the grand jury that indicted and the petit jury that convicted him. — Miss. —, 29 So. (2d) 96. We granted certiorari to review this serious contention.[1] — U. S. —.

Sixty-seven years ago this Court held that state exclusion of Negroes from grand and petit juries solely because of their race denied Negro defendants in criminal cases the equal protection of the laws required by the Fourteenth Amendment. *Strauder* v. *West Virginia*, 100 U. S. 303 (1880). A long and unbroken line of our decisions since then has reiterated that principle, regardless of whether the discrimination was embodied in statute[2] or was apparent from the administrative practices of state jury selection officials,[3] and regardless of whether the system for depriving defendants of their rights was "ingenious or ingenuous."[4]

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[1] Petitioner also argued that his conviction was based solely on an extorted confession; that use of this extorted confession denied him due process of law; and that the case should be reversed for that reason. The view we take as to the systematic exclusion of Negro jurors makes it unnecessary to pass on the alleged extorted confession.

[2] *Bush* v. *Kentucky*, 107 U. S. 110, 122.

[3] *Ex parte Virginia*, 100, U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; *Carter* v. *Texas*, 177 U. S. 442; *Rogers* v. *Alabama*, 192 U. S. 226; *Norris* v. *Alabama*, 294 U. S. 587; *Hollins* v. *Oklahoma*, 295 U. S. 394; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 316 U. S. 400.

[4] *Smith* v. *Texas*, 311 U. S. 128, 132.

Whether there has been systematic racial discrimination by administrative officials in the selection of jurors is a question to be determined from the facts in each particular case. In this case the Mississippi Supreme Court concluded that petitioner had failed to prove systematic racial discrimination in the selection of jurors, but in so concluding it erroneously considered only the fact that no Negroes were on the particular venire lists from which the juries were drawn that indicted and convicted petitioner.[5] It regarded as irrelevant the key fact that for thirty years or more no Negro had served on the grand and petit juries. This omission seriously detracts from the weight and respect that we would otherwise give to its conclusion in reviewing the facts, as we must in a constitutional question like this.[6]

It is to be noted at once that the indisputable fact that no Negro had served on a criminal court grand or petit jury for a period of thirty years created a very strong showing that during that period Negroes were systematically excluded from jury service because of race.[7] When such a showing was made, it became a duty of the State to try to justify such an exclusion as having been brought about for some reason other than racial discrimination. The Mississippi Supreme Court did not conclude, the State did not offer any evidence, and in fact did not make any claim, that its officials had abandoned their old jury selection practices. The State Supreme Court's conclusion of justification rested upon the following reasoning. Section 1762 of the Mississippi Code enumerates the qual-

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[5] *Akins* v. *Texas*, 325 U. S. 398, 403.

[6] *Norris* v. *Alabama*, 294 U. S. 587, 590; *Pierre* v. *Louisiana*, 306 U. S. 354, 358; *Akins* v. *Texas*, 325 U. S. 398, 402; *Fay* v. *New York*, 332 U. S. 261, 272.

[7] *Neal* v. *Delaware*, 103 U. S. 370, 397; *Norris* v. *Alabama*, 294 U. S. 587, 591; *Pierre* v. *Louisiana*, 306 U. S. 354, 361.

ifications for jury service, the most important of which apparently are that one must be a male citizen and "a qualified elector." Sections 241, 242, 243 and 244 of the state constitution set forth the prerequisites for qualified electors. Among other things these provisions require that each elector shall pay an annual poll tax, produce satisfactory proof of such payment, and be able to read any section of the state constitution, or to understand the same when read to him, or to give a reasonable interpretation thereof. The evidence showed that a very small number of Negro male citizens (the court estimated about 25) as compared with white male citizens, had met the requirements for qualified electors, and thereby become eligible to be considered under additional tests for jury service. On this subject the State Supreme Court said:

> "Of the 25 qualified negro male electors there would be left, therefore, as those not exempt, 12 or 13 available male negro electors as compared with 5,500 to 6,000 male white electors as to whom, after deducting 500 to 1,000 exempt, would leave a proportion of 5,000 nonexempt white jurors to 12 or 13 nonexempt negro jurors, or about one-fourth of one per cent negro jurors,—400 to 1. . . . For the reasons already heretofore stated there was only a chance of 1 in 400 that a negro would appear on such a venire and as this venire was of one hundred jurors, the sheriff, had he brought in a negro, would have had to discriminate against white jurors, not against negroes,—he could not be expected to bring in one-fourth of one negro." [8]

[8] Although this latter statement was made with particular reference to the special venire from which the petit jury was drawn, the reasoning of the court applied also to its grounds for holding that there was no discrimination in excluding Negroes from the grand jury.

The above statement of the Mississippi Supreme Court illustrates the unwisdom of attempting to disprove systematic racial discrimination in the selection of jurors by percentage calculations applied to the composition of a single venire.[9]

The petitioner here points out certain legislative record evidence[10] of which it is claimed we can take judicial notice, and which it is asserted establishes that the reason why there are so few qualified Negro electors in Mississippi is because of discrimination against them in making up the registration lists. But we need not consider that question in this case. For it is clear from the evidence in the record that there were some Negroes in Lauderdale County on the registration list. In fact, in 1945, the circuit clerk of the county, who is himself charged with duties in administering the jury system, sent the names of eight Negroes to the jury commissioner of the Federal District Court as citizens of Lauderdale County qualified for federal jury service. Moreover, there was evidence that the names of from thirty to several hundred qualified Negro electors were on the registration lists. But whatever the precise number of qualified colored electors in the county, there were some; and if it can possibly be conceived that all of them were disqualified for jury service by reason of the commission of crime, habitual drunkenness, gambling, inability to read and write, or to meet any other or all of the statutory tests, we do not doubt that the state could have proved it.[11]

We hold that the State wholly failed to meet the very strong evidence of purposeful racial discrimination made out by the petitioner upon the uncontradicted showing

[9] *Akins* v. *Texas*, 325 U. S. 398, 403.

[10] *Hearings before Special Committee to Investigate Senatorial Campaign Expenditures, 1946*, 79th Cong., 2d Sess. (1947).

[11] *Hill* v. *Texas*, 316 U. S. 400, 404–405.

that for thirty years or more no Negro had served as a juror in the criminal courts of Lauderdale County. When a jury selection plan, whatever it is, operates in such way as always to result in the complete and long-continued exclusion of any representative at all from a large group of Negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand. As we pointed out in *Hill* v. *Texas*, 316 U. S. 400, 406, our holding does not mean that a guilty defendant must go free. For indictments can be returned and convictions can be obtained by juries selected as the Constitution commands.

The judgment of the Mississippi Supreme Court is reversed and the case is remanded for proceedings not inconsistent with this opinion.

*Reversed.*